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POLITICAL SCIENCE QUARTERLY

SOVEREIGNTY AND GOVERNMENT

EDMUND BURKE'S observation that "it is very rare indeed for men to be wrong in their feelings concerning public misconduct; as rare to be right in their speculation upon the cause of it," applies to the operations of the human mind upon many subjects. As products of evolution, feelings are older than thoughts; they represent ages of adjustment of the human organism to its environment; they are closely related to instincts. Yet it would not be safe to say that, while the speculations of the multitude upon the causes of things in general are more or less fantastic, the feelings of the multitude may always be accepted as right and trusted for guidance. No writer more vividly than Burke himself, in his *Reflections on the French Revolution* and elsewhere, has shown us how darkly evil the feeling of the multitude may be when, in moments of frenzy, the populace gives itself over to acts of mad destruction or of savage cruelty.

Accepting, then, the general truth that, with some startling exceptions, the feelings of mankind are sounder than its speculations, we are confronted with the complicating fact that theories play a large part in arousing and sustaining feeling. There has never been a popular revolution in which abstract theories of government have not been invoked to inflame the multitude. Theories of popular sovereignty played this part in the French Revolution; theories of the essential sacredness of the individual personality played a like part in the anti-slavery struggle in the United States. How, then, can we say that feelings are more

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likely than theories to be right, when feelings and theories are so intimately blended?

The true answer to this question is, I think, that theories are of two radically different kinds, which we must be careful to distinguish when we attempt to study the concerted activities of interacting minds. The theories that inflame passion or awaken conscience are not the scientific or the pseudo-scientific explanations of causation that interest the intellect; rather are they certain assumptions regarding ends to be attained, or, more abstractly, regarding the relative values of the things that men hold dear. At the opposite pole of thought from speculation upon the causes of things, they are theories not of what has been, what is, and what inevitably must be, but of what ought to be. They are formulas not of knowledge or of error, but rather of conviction; and this amounts to saying that they are products of feeling rather than of thinking. They arouse feeling, because they themselves are compressed expressions of feeling and have a correspondingly high explosive power.

The power and the fate of the great religions of the world unmistakably reveal the fundamental difference between theories of what was and is, on the one hand, and theories of what should be, on the other hand, in their respective relations to human feeling and to conduct. The speculative theories of causation embodied in religious systems have fallen into discredit; but the convictions of human need, of the supremely desirable ends of life, of what ought to be, that religious systems have fostered and transmitted, have been and in the main are still vitally true. The intellectual product has been childish; the tremendous mass of feeling has been on the whole a true adjustment of conscience and will to an all-shaping environment. The grotesque totemism of savagery, as a theory of causation, could not survive the infancy of the human mind; but the conviction that the totem kin ought to live on terms of mutual aid with some chosen species in the plant or animal world preserved food and medicinal supplies from wanton destruction, stimulated human imitation of wild creatures, and in countless useful ways enabled the primitive man himself to survive. The theology developed in connection with monotheism, as an explanation of the origin

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and order of the universe, has encountered destructive criticism in a scientific age; but the conviction that men whose common lot demands a comprehensive organization should not persist in worshipping hostile gods at miscellaneous altars is as well grounded to-day as it was when warring tribes first pooled their interests in the creation of political states.

Next to theories of religious obligation, theories of the rightful forms of government and of the rightful scope of governmental power have most profoundly affected human feeling. They have pacified stolid millions to uncomplaining obedience, as in the czar-worshipping Russias of yesterday. They have struck the spark of rebellion that has dethroned kings and disintegrated empires. To the extent that these theories are formulas of feeling rather than of speculation, there is a certain presumption that they are true products and expressions of some great collective need—that they reveal obstinate conditions of existence, to which the social scheme and the common conduct of men must somehow be accommodated.

Some of the more important theories of government, however, that have been held in modern times and are still vital factors of continuing political evolution, are highly complex products of both popular feeling and expert speculation. They have been thrown into their accepted form by intellects of philosophical grasp and power, whose conceptions of causation have certainly not been wholly untrue. Scrutinized by the logician, they have been found to be masterpieces of reasoning. Granting their premises, we have been unable to reject their conclusion, that human government may rightly do this or may not rightly do that. But when attacked as merely *a priori* systems, they have fared not so well. The origins of state and government which political philosophers have formulated have been derived by them from an examination of the nature of the state or from an analysis of political forces. The historical origins of actual states and governments seem to have been very different; so different that the philosophical hypotheses appear to be almost unrelated to reality.

The sufficiency and the finality of this *a posteriori* criticism, I now venture to question. I think that it has been too literal

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and too narrow, and that it has missed the points of real importance. What it is really worth while to know, I suspect, is whether the theories in question represent irresistible forces and express them with substantial truth. If they do, it matters little whether these forces have or have not created states and established governments in this or that peculiar way. Have the conclusions respecting the rightful authority of governments been in truth not only logical deductions from assumed premises, but also expressions of prevalent popular feeling? Has the popular feeling corresponded to some prevailing condition of social existence, and therefore to some compelling necessity for a given form of collective conduct? Do this moral necessity and the underlying conditions of existence from which it springs correspond substantially, if not narrowly and literally, to the conceptions of the nature and origin of the state from which the propositions touching the authority of government have been deduced? If these questions must be answered affirmatively, are not the great political theories substantially verified by *a posteriori* criticism, and have we not a scientific basis from which to forecast the probable future evolution of human government?

For the purpose of this inquiry, I propose to examine the fact as well as the conceptions of sovereignty; the actual forms and powers of government as well as the theories of their legitimate range and activity.

If with the aid of such a product of critical scholarship as Professor Dunning's illuminating volumes,[1] one traces the conception of sovereignty through its curious wanderings from the *Politics* of Aristotle to the *De corpore politico* and the *Leviathan* of Hobbes, and thence down through the analytical jurisprudence of Austin to the lectures of Sir Henry Sumner Maine, he cannot fail to see that the so-called "Austinian" definition,[2]

[1] Dunning, Political Theories, Ancient and Mediæval (1902); Political Theories, from Luther to Montesquieu (1905).

[2] The definition is in fact not Austin's; it is one which Maine attributes to Austin. *Cf.* Austin, The Province of Jurisprudence Determined, lecture vi, and Maine, Lectures on the Early History of Institutions, lecture xii.

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which has become the cornerstone of modern political science, is modern not only chronologically but also qualitatively and structurally. For example, nothing so arrests the attention of a reader fresh from the pages of Burgess, of Dicey, of Sumner Maine or of Austin himself, on going back to the writings of Hobbes, as the emphasis that Hobbes lays upon supreme right, in distinction from supreme power, as the essential attribute of sovereignty.

In the modern mind the initial political thought is that somewhere, in every state, there resides a power that can and does compel the obedience of every subject.

> There is in every independent political community—that is, in every political community not in the habit of obedience to a superior above itself—some single person or some combination of persons which has the power of compelling the other members of the community to do exactly as it pleases. This single person or group—this individual or this collegiate sovereign (to employ Austin's phrase)—may be found in every independent political community as certainly as the center of gravity in a mass of matter.[1]

And Professor Burgess, answering the question, "What now do we mean by this all-important term and principle, the sovereignty?" says: "I understand by it original, absolute, unlimited, universal power over the individual subject and over all associations of subjects." [2]

Consistently with this assumption the modern mind accepts the distinction, first clearly made by Bodin,[3] between the state and the government—a distinction which in the last analysis means that sovereign and government are neither necessarily nor always one and the same. Governments may and do fail to enforce their commands; nay, may themselves be overthrown. The sovereign, however, we are assured, is not contemned when governments are defied. In reality it is the sovereign that acts; for what the sovereign permits, the sov-

[1] Maine, *loc cit.* p. 349.

[2] Burgess, Political Science and Comparative Constitutional Law, vol. i, p. 52.

[3] Dunning, Political Theories, from Luther to Montesquieu, p. 103.

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ereign commands, and governments are but creatures and agents of the sovereign will.

In the radically different thought of Hobbes, sovereignty is not primarily a power to compel obedience; it is rather an unquestionable right to compel, if it can, and Hobbes does not pretend that it always can. Talk as he may about sovereignty holding its subjects "in awe," he is barred, by his initial hypothesis that through a social covenant sovereignty *is instituted*, from claiming that it is or can be an irresistible power. If instituted, it is a created thing. The natural man gave and the natural man may take away. On this point Hobbes has no illusions, notwithstanding his contention that in the social covenant men make absolute surrender of their natural rights and therefore of their wills; for his theory of revolution amounts to an admission that, while subjects have no right to resume either their natural rights or their natural wills, they may *de facto* resume their natural wills and, by resolving society back into a state of nature, get back *de facto* their natural rights. If, then, we hold with modern writers that sovereignty is supreme power and supreme power is sovereignty, while a supreme right—instituted or conferred by sovereignty—to exercise power is merely government, it would seem that Hobbes's conception of sovereignty is in truth a conception rather of government. At any rate, we may at least claim that the conception of Hobbes leads as inevitably to the identification of government with sovereignty as the "Austinian" conception to the distinction between state and government.

If now we follow the concept farther and farther back, to Bodin, to Dante, to Aristotle, we find that it becomes less and less "Austinian." For one thing, it becomes more concrete. Bodin, it is true, discourses of sovereignty as an abstraction, since he recognizes that it is a certain bundle of attributes and powers; but the sovereignty that he habitually thinks of is, nevertheless, embodied in a sovereign, that is to say, a king. For Dante, sovereignty and monarchy are one and the same. He not only identifies sovereignty with government, he also very nearly identifies both government and sovereignty with the state; his conception on this point seeming often to be almost

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the exact opposite of that which modern writers hold. The state is the empire in opposition to the church, and the legitimate emperor in the Roman succession is the sovereign. Aristotle, familiar with every form of the state and of government, does not thus identify sovereignty only and always with an individual, but he does identify it with some very concrete parcel of humanity; with a king or a tyrant, with an aristocratic class or oligarchy, or with an Athenian demos—one of the most concrete things that ever has existed.

Not one of these writers possessed Hobbes's sharply defined conception of sovereignty as supreme and absolute right; not one of them had the clean-cut Austinian conception of sovereignty as irresistible power. Rather did they all think of it more or less crudely and hazily, as supreme but not necessarily resistless power, as supreme but not necessarily absolute right, as supreme but not always unquestionable authority.

Let us pass now from these conceptions of sovereignty to the social fact of sovereignty; and let us ask whether we are justified in assuming that the fact has at all times been one and the same fact, or whether sovereignty itself may have been a variable, an evolutionary phenomenon, created by and in turn creating varying moods of human feeling, varying attitudes of will, and consequently varying conceptions and speculations. This is a question which, I suspect, the student of political science as such or the jurist as such may be unable to answer. It is, I venture to think, a sociological question; and I believe that the answer to it, if found at all, must be found through ways of looking at social facts and processes that are acquired only through some sociological training.

Putting aside for the moment, then, all carefully phrased definitions and finely analytical distinctions, let us see whether, as a matter of fact, there really is somewhere in every commonwealth a finite power, personal or social, that either does or can compel the obedience of practically all members of the community. I am aware that this question assails fundamental assumptions, which have been thought to be as solid as the everlasting hills. But now and then in the progress of science such questions have to be asked, and the consequences sometimes

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are curious. Who thirty years ago would have dreamed that physicists would so soon question the indivisibility of the primordial atom? Yet here we are to-day in a new world of physical conceptions, from which the indivisibility and everlastingness of the atom have forever been banished. When the old conceptions were subjected to a really radical scrutiny, under the light of really fundamental facts, they crumbled. Are our assumptions on the subject of sovereignty, the assumptions of political science, certainly more substantial?

As might have been expected, it was the consideration of very obvious and commonplace facts that shattered the atom into ions and corpuscles. And facts that daily stare us in the face awaken our scepticism about sovereignty of the "Austinian" description. Is there any power in any commonwealth that really does compel the obedience of everybody, or even of every particular individual whom it sets out to coerce? Does any one seriously believe that there is such a power?[1] In every-day life a political subject who cannot successfully defy or elude any known sovereign, Christian or pagan, oriental or occidental, during some part of his waking hours, and in some of his affairs, lacks executive ability. He will never be a satrap or an alderman, certainly not a "magnate" or a "boss." Of course the political philosopher admits this, but he tries to save his assumptions by assuring us that no one man could persistently defy the sovereign authority of the state, if the sovereign really set about the business of bringing him to book, or that, if he could, the rebel himself would be the sovereign.

Being now in a sceptical frame of mind, let us be sceptical to the end. Who or what is this sovereign that can, if he or it will, compel an unwilling obedience? Is it an individual, a

[1] Austin certainly did not so believe. His own words, in the Province of Jurisprudence Determined, lecture vi, are: "In order that a given society may form a society political, habitual obedience must be rendered by the *generality or bulk* of its members to a determinate and common superior. In other words, habitual obedience must be rendered by the *generality or bulk* of its members to one and the same determinate person or determinate body of persons." Austin here follows the perfectly reasonable thought of Bentham, A Fragment on Government, chapter i, section xii, and the passage is irreconcilable with the definition that Maine offers as "Austinian."

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king? Has history told us of any king who, alone and unaided, ever compelled or could have compelled the obedience of five per cent of his worshipful subjects? Is the sovereign then the king plus someone else, the king and his liegeman; or, in a republic, is the sovereign some definite or indefinite number of individuals acting together? Undoubtedly every political philosopher who has conceived of sovereignty as a power to compel obedience has consciously or unconsciously thought of it as a collective power.

Obviously a group of individuals, if their number is large enough, can, if they will and as long as they will, compel any one individual to obey them. But observe that we are here talking not of an indivisible phenomenon, that is to say of power, but of a complex of phenomena; that is to say of power resulting from a certain correlation of forces and conditions. If certain individuals will the same thing and act together, and if they are sufficiently numerous, they undoubtedly constitute a power that can compel obedience. Here, at last, we get back to our fundamental question: Do we find, in every state and at all times so perfect and so continuous a concert of so many individual wills that at every instant it can, whether or not it does, compel the obedience of all or of most of the members of the commonwealth? This is what sovereignty in the "Austinian" sense signifies when we translate the abstract into the concrete. So interpreted, is sovereignty in the "Austinian" sense a fact? I have to record my perplexities and doubts. I am not prepared to deny that in certain communities and at certain times certain groups of men attain a sufficient degree of mental and volitional solidarity to compel not only particular individuals, and not only great numbers of individuals, but practically entire commonwealths, to submit and obey for a while. But I suspect that the phenomenon is comparatively rare and decidedly intermittent. In short, I suspect that sovereignty, as the actual power to compel obedience, is one of the comparatively rare, as it is certainly one of the highly complex, phenomena of human society.

If after weighing these objections we cannot longer think of sovereignty as a power to compel obedience save as an occa-

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sional phenomenon, how shall we think of it? Or, to put the case a little differently, what practically universal social phenomenon is it that has compelled the political philosopher to form some conception or at least to construct some definition of sovereignty? One thing seems plain. In every state we do find a superior or a supreme power, individual or collective, which, as a general thing, is respected and obeyed. The only allegations that we have questioned are that this power is always absolute, that it always secures obedience, and that it can always compel.

Obviously the question that we now should ask is: What other ways of getting obedience are there besides the way of compulsion? And if we find that there are other ways, we should ask if each is correlated with some historical form that sovereignty assumes.

The earliest and probably to this day the most popular conception of sovereignty identifies it with a personal sovereign—a monarch or a dictator. We have seen that no mere individual can to any great extent compel the obedience of his fellows. Yet one of the most familiar facts in human society is the actual obedience of the inferior many to the superior few. From the ringleader of the school-boy crowd or of the street gang to a Julius Caesar or a Napoleon Bonaparte, we find every gradation of personal supremacy recognized and acknowledged in various acts of subordination and obedience, ranging from a mere following to loyalty, and rising at times to an almost idolatrous devotion. The power that calls forth obedience is not necessarily the prowess of the bully. Now and then physical strength has been an important factor in personal supremacy. It was conspicuously so in William of Normandy; but Caesar and Napoleon are understood to have been of inferior rather than superior physical parts. It is hardly necessary to linger on this point, because the consensus of human observation is clear. In a vast majority of instances the leader and ruler who is generally obeyed dominates through that gift which psychologists call the power of impression—a mental and moral power, the power of mere mind to awe and to fascinate, at times to inspire fear.

Not quite so familiar a fact as personal supremacy, but a

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commonplace of history none the less, is the supremacy of a superior class. If individual supremacy may be called personal sovereignty, the supremacy of many superiors collectively, constituting an aristocracy or an oligarchy, may be called class sovereignty. As a fact of history such supremacy has commonly originated in conquest. The inferior social classes have at the beginning been the subjugated inhabitants of a conquered land, whose lives have been spared by their conquerors. But the day comes when they render an obedience that is not primarily enforced by physical means. It may be a homage rendered to authority—a form of power that is essentially mental and moral, backed up by tradition and sanctioned by religion; a power appealing to the sentiment and sometimes to the conscience of the obedient. Or, obedience may be exacted by economic superiority, the ruling oligarchy being rich and the subservient people being poor; the exaction nevertheless falling well short of compulsion.

At times, however, as we have admitted, there appears in human populations the phenomenon of a collective power which, for the time being and until the power itself disintegrates, is physically irresistible. The elementary form and primitive example of it is the mob-crowd bent on vengeance, on lynching or devastation. Throughout history there have been occasions when the masses of the people, aroused to opposition and compacted by revolutionary madness, have become a force that no individual, class or group could withstand. In the most literal and brutal sense, it has compelled obedience to its will. In modern democracies mere numerical majorities are in like manner irresistible, even in days of domestic peace, so long as they maintain the psychological solidarity of a crowd, because resistance instantly converts them into a demoniac physical power. This resistless social will-power of the psychologically unified crowd or majority may appropriately be called mass sovereignty.

Finally, in a highly intelligent population, where reason on the whole controls sentiment, there are evolved a collective opinion to which individuals in general defer and a collective will which individuals in general respect and obey. Every

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member of the community, from the humblest to the highest, may contribute through discussion some element of thought to the common judgment, and through voluntary conduct some element of moral power to the general determination. The general will so evolved might command, exact or compel a vast deal of individual obedience, but actually it does something different and higher. It evokes obedience. Individuals in general submit to it, not as being compelled but voluntarily, because they feel that such is the right and the normal thing to do. Appealing to reason, to conscience and to common sense, the general will calls forth a cheerful and a reasonable service. This tremendous power of the general and deliberate will is a general sovereignty, in the sense that it is not the power of any mere mass, of any one class or of any one person.

What now have we discovered? Briefly this. Of four possible and familiar modes of that superior power which in political society actually secures the obedience of most men most of the time, one only is a power to compel obedience, and that one is a power that is conditional upon an obsession of the multitude. Personal sovereignty, the oldest and on the whole the commonest form, is not a power to compel, it is rather a power to command obedience. Class sovereignty, appealing through religion and tradition to human sentiment, or relying on superior wealth, is a power to inspire or to exact obedience. Mass sovereignty, the sovereignty of the overwrought and emotionally solidified multitude, is for the time being a true power to compel obedience, since, while it lasts and as far as it can reach, it is irresistible. And finally, the general sovereignty of an enlightened people that arrives at concerted volition through reason and discussion is a power, through its appeal to intelligence, to call forth, that is to say, to evoke obedience.

These four modes of sovereignty are not indifferently distributed among the peoples of the earth. One does not spring up in any given commonwealth irrespective of the social psychology found there. Each is correlated with a particular development of mentality in the population, or, to speak more technically, with a particular phase of the social mind.

Personal sovereignty, or the power to command obedience,

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arises where the collective mental life is little more than instinctive. The submission of many wills to one superior will is not a phenomenon characteristic of highly developed or reasoning intelligence. It is a product of the lowest modes of mental activity. It is found throughout the animal kingdom as among men. It occurs almost unconsciously, as does instinctive action of every kind. The individual who participates in it does not know why he surrenders his own mind to another more powerful. He does it as a dog crouches and fawns. In brief, the power to command obedience is a characteristic product of an ideomotor population.

Class sovereignty, or the power to inspire or to exact obedience, is correlated with a slightly higher grade of mentality, namely, the emotional or sympathetic. It is a product of sympathetic like-mindedness. The superior class, making its appeal to reverence, to sentiment, or to the love of splendor, addresses the feelings rather than the underlying instincts or the overlying intelligence.

Mass action or mass sovereignty also depends upon emotion, but not upon emotion of the merely sympathetic sort. To create mass sovereignty, emotion must be raised to a high pitch and focussed by dogmas, which are made efficient through symbols, partisan cries and fetishistic emblems. A people dogmatically like-minded for a longer or a shorter time becomes more or less fanatical, and its fanaticism, fixed upon definite objects, holds great numbers of individuals in a state that may approach a frenzied intolerance of disobedience.

That most complex phenomenon, a general sovereignty, can exist only in a community of the generally intelligent, who discuss all public questions in a rational way, and who bring about a concert of wills through an exploitation of ideas, rather than through an explosion of feeling or through uncontrolled activity of a merely instinctive sort. General sovereignty is a product of deliberative, that is to say, of rational like-mindedness.

These conceptions of sovereignty enable us to look at the phenomena of government from a new point of view. A sociological classification of governments, in turn, may reinforce our interpretation of sovereignty.

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Whatever its mode, sovereignty, as disclosed by sociological analysis, is always supreme power, and not mere right. So far the fundamental concept of modern political science is a true symbol of social fact. Moreover, sovereignty is power to obtain if not always physically to compel obedience. The exercise of supreme power, however, in the actual obtaining of obedience, is not carried far for the mere sake of asserting supremacy. Obedience is desired as a means to some end, and as such it is more or less systematically required, directed and organized. The requisition, direction and organization of obedience is government.

The supreme power itself may govern, or it may delegate governing power and authority. The personal or the class sovereign does not often wholly delegate governing functions. So far as it does delegate, it usually confers authority on a relatively small number of individuals. So, whether immediate or delegated, the government of a personal or of a class sovereign is usually government by a minority of the individuals composing the given political community. The mass or the general sovereign usually does delegate governing authority and power, and usually its delegation is to a numerical majority of the political population. This majority, in turn, usually delegates the actual exercise of the governing power to a limited number of functionaries, who, however, are but the strictly subservient agents of the majority. Whether immediate or delegated, therefore, the government instituted by a mass sovereign or by a general sovereign, is usually majority government.

Besides these distinctions among governments as immediate or delegated, and as minority or majority governments, we have the familiar distribution into absolute and limited governments. In view of what has been said in criticism of the conception of sovereignty as a power to compel obedience, it is unnecessary to argue that no government, except it be instituted by mass sovereignty, can be absolute in the sense that, as power, it is unlimited. Practically all governments are limited in so far as they are modes and manifestations of power. Any government, however, may be absolute in the sense that it is or has unlimited authority. Any sovereign can vest any government that it may

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institute with unconditional, unlimited authority, that is, with the right to do anything that it can do. We have seen that absolute government in this sense is substantially the thing that Hobbes had in mind when he discoursed of sovereignty. As a rough distinction, not to be pressed too far, it is scientific to think of sovereignty as supreme power, right or wrong, and of government as the supreme authorized exercise of power.

Adhering to our definitions and reservations, we observe that, when a personal sovereign himself governs or a class sovereign itself exercises governing functions, the government is necessarily absolute, since the sovereign is the source of all conditions and limitations affecting authority. But any sovereign, personal, class, mass or general, may institute a government of delegated powers, and the government may be either absolute or limited, according to the extent of the authority conferred.

If the distinctions thus far made—immediate and delegated, minority and majority, absolute and limited—exhaust the fundamental categories of governmental mode, it is obvious that there may theoretically be eight kinds of government, since there are eight possible combinations of six terms. Practically however, only four of the possible kinds are or have been great social realities, because the distinction between immediate and delegated modes of government is practically of no importance so long as the mode of sovereignty remains the same. Delegated government, we again observe, does not often appear under personal or class sovereignty, and immediate government does not often appear under mass or general sovereignty. Practically, then, as great social realities, the modes of government are these, namely: absolute minority rule, limited minority rule, absolute majority rule and limited majority rule.

Here at length we return to those problems that were the subject of reflection in my preliminary remarks about the relation of popular feeling to speculative theorizing on the subject of government. If there are four well-defined modes of sovereignty, and four well-defined modes of government, we ought to find four well-defined groups of theories or tendencies of speculation on the nature and scope of government. This, as a matter

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of fact, is exactly what we do find in the literature of political philosophy, beginning with Hobbes and coming down to the present time. Until Hobbes, not all the possibilities had been intellectually exploited. Furthermore, it is easy to compare these speculations one with another, because, curiously enough, all four kinds or tendencies have been stated in terms of that interesting conception known as the covenant or contract theory of society, and each is represented by a work of enduring distinction, which has exercised great influence over both the thinking and the conduct of mankind.

The contract theory has this peculiar advantage for our present purpose, that it assumes as the starting point of political development a pre-existent general sovereignty; that is to say, it assumes as the beginning of all things political a population in which every man is his own master, and the appearance in that population of a concerted opinion, decision and will. So far the writers of the four great works are in agreement. They begin to disagree when they ask what happens next.

According to Hobbes, whose immortal *Leviathan* is an expanded and popularized edition of his almost forgotten *De corpore politico*, men in a state of nature, before the art of government has yet been invented, find life unendurable. Presumably they talk things over, because they come to an agreement by unanimous consent—an absolutely perfect phenomenon, let us remark, of general sovereignty. They agree that one of their number shall be an absolute ruler over them, and having fixed upon the individual, not by the blind instinctive method whereby the herd selects its leader, but by rational choice, they make over to him all their natural rights. He is to hold them in subjection, lay commands upon them, and create for them positive rights in place of the natural rights surrendered. Since the sovereign thus becomes the sole source of right, there can be no right of even peaceful revolution. The sovereign ruler cannot lawfully be deposed by his subjects. However, if they rebel and succeed in deposing him, their action, in virtue of its success, resolves society back into a state of nature. A new covenant may then be made and a new sovereignty be set up. Hence the practical aphorism, which has lent immense aid and

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comfort first and last to both the English and the American mind, that an unsuccessful revolution is a rebellion and a successful rebellion is a revolution.

Throughout this pretty piece of logic Hobbes speaks of the instituted ruler as the sovereign. Considering sovereignty as a right to enforce obedience rather than as a power, Hobbes's mind is intent upon the transfer, by covenant, of the original or natural right of each individual to rule himself, to a sovereign who may thenceforth rule him. In such a transaction as Hobbes describes, there is in fact no transfer whatsoever of sovereignty in the sense of power. Sovereignty remains where it was at first, in the people. They have merely created an absolute minority government, nothing more, and by no possibility could they by deliberative action alienate their sovereignty. By a totally different process, of which Hobbes has no suspicion, they may lose it. Ceasing to be rational and deliberative, becoming impressionable and instinctive, they may unconsciously yield their wills more and more to a ruler of forceful personality. General sovereignty may cease to exist, and personal sovereignty may take its place.

John Locke, writing under political conditions very different from those that shaped the thinking of Hobbes, conceived of the state of nature in a radically different way, and his thinking is straight and clear at a critical point where Hobbes goes wrong. The state of nature, as Locke imagines it and as the *Treatises of Government* picture it, is by no means intolerable; it is only inconvenient. Men therefore are under no necessity to surrender their natural rights. They institute government only to achieve desirable ends which otherwise they could not secure. Therefore they never arrive at any common intention to create a personal sovereign. To their government they delegate limited authority only, establishing usually a limited monarchy. Locke, in a word, sees that in a population of reasoning beings, capable of instituting society by covenant, sovereignty inheres and must forever remain in the people. It cannot by any process of deliberative volition become personal. On another point, however, he falls down where Hobbes walks with assurance. A sovereign people may, if it chooses, create an absolute government, and sometimes it so chooses.

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In the *Social Contract* of Rousseau, we have for the first time in political literature a remarkable exposition of the theory of absolute majority government. Along with it we have a definite recognition, such as we find in the pages of Aristotle, that other forms of sovereignty, class and personal, may exist, and have existed, apart from any social contract, and that under any form of sovereignty government may be absolute. The political organization of mankind, Rousseau reminds us, began in force, not in contract. Personal sovereignty and absolute minority rule were not instituted by covenant. The social contract is made, and "association" as distinguished from "aggregation" comes into existence, through a general revolt against minority despotism. The state of oppression under which men have lived has been as intolerable as any state of nature conceived by Hobbes. To escape from it, men are willing to take steps quite as radical as the absolute surrender of natural rights to a personal ruler, which Hobbes imagined. According to Rousseau, men unreservedly surrender their individual wills to the general or collective will. For all practical purposes this collective will is the will of a majority. It is absolute, and every individual must wish that it shall be absolute, because on no other terms is society, as distinguished from minority despotism, possible or conceivable. This doctrine, accepted by the French revolutionists, is accepted also in the United States as the basis of political party discipline, and is put in force by every trade-union organization.

American political philosophy in general, however, has never accepted Rousseau's doctrine of majority absolutism, and American constitutional law has abjured it. To what influence is the American principle traceable, that even the majority may exercise only limited powers of government? I mean, of course, to what is it traceable as a consciously accepted theory. As practice its causes must be found in conditions to be indicated later on. In the evolution of theory we ought to find some noteworthy work standing for limited majority rule in opposition to Rousseau's absolutism, as Locke's *Civil Government* stands for limited minority rule in opposition to the absolutism of Hobbes. Such a book there is, and while in recent years it has not often

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been quoted or discussed, it comprehensively reflected American revolutionary thinking, and it exerted a deep and wide influence during the formative period of American constitutionalism. I refer to Thomas Paine's *The Rights of Man*. In substance this work is a vigorous defence of the French "Declaration of the Rights of Man," which, as all students of political history are now aware, was far more a product of American than of French political thought. Specifically, Paine's tract is a masterly arraignment of Burke's *Reflections on the French Revolution*, and in particular of Burke's contention that the people of England "utterly disclaim" the alleged fundamental rights to choose their own governors, to cashier them for misconduct, and to frame a government for themselves. Burke asserted that the English people had disclaimed these rights because Parliament, in a declaration to William and Mary, had said: "The Lords spiritual and temporal and Commons do, in the name of the people aforesaid [meaning the people of England then living] . . . most humbly and faithfully submit themselves, their heirs and posterities forever."

Such a declaration, Paine argues, can have no binding force for succeeding generations. He says:

> There never did, there never will, and there never can exist a parliament of any description of men, or any generation of men, in any country, possessed of the right or the power of binding and controlling posterity to the "*end of time*," or of commanding forever how the world shall be governed, or who shall govern it: And therefore all such clauses, acts or declarations, by which the makers of them attempt to do what they have neither the right nor the power to do, nor the power to execute, are in themselves null and void. Every age and generation must be as free to act for itself, *in all cases*, as the ages and generations which preceded it. The vanity and presumption of governing beyond the grave, is the most ridiculous and insolent of all tyrannies. Man has no property in man; neither has any generation a property in the generations which are to follow. The parliament or the people of 1688, or of any other period, had no more right to dispose of the people of the present day, or to bind or to control them *in any shape whatever*, than the parliament or the people of the present day have to dispose of, bind or control those who are to live a hundred or a thou-

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sand years hence. Every generation is and must be competent to all the purposes which its occasions require. It is the living, and not the dead, that are to be accommodated. When man ceases to be, his power and his wants cease with him; and having no longer any participation in the concerns of this world, he has no longer any authority in directing who shall be its governors, or how its government shall be organized, or how administered.[1]

It must be admitted that this statement, as it stands, falls short of the assertion that the rightful powers of majorities, as such, are limited. But the principle is clearly implied. If not even the nation itself as a whole may rightfully bind future generations, the absolutism of the majority has no leg to stand on. Moreover, in the last analysis Paine rests his case on the axiom that "the rights of man in society are neither devisable, nor transferable, nor annihilable, but are descendable only."[2] This is the same axiom that is otherwise expressed in the first two articles of the "Declaration of the Rights of Man," namely:

> Men are born and always continue free, and equal in respect to their rights. Civil distinctions, therefore, can be founded only on public utility.
>
> The end of all political association is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.

In reaffirming and supporting these declarations, and especially the second, Paine is unquestionably attacking absolutism under every form and disguise. If the end of all political association is the preservation of natural and imprescriptible rights, then neither majorities nor councils nor kings can have unlimited authority. Back of all authority lie powers and rights that cannot be delegated.

This, the doctrine of limited majority rule, has in America its effective legal expression in our constitutional limitations, our system of checks and balances, and especially our two-thirds

[1] The Political Works of Thomas Paine (1826), pp. 8–9. The Writings of Thomas Paine, edited by Conway, vol. ii, pp. 277, 278.

[2] *Ibid.* p. 107. Conway, ii, p. 365.

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and three-fourths rules governing the adoption and amendment of constitutions themselves. All these provisions are assertions and guarantees of rights of minorities and of individuals against majority power. It is the doctrine of the Declaration of Independence, but it found its strongest and best expression in an American document antedating the Declaration almost exactly as long as that document antedated the French "Declaration of the Rights of Man." This was the report on the "Natural Rights of the Colonists," made to the Committee of Correspondence by Samuel Adams, Joseph Warren and Benjamin Church at Faneuil Hall, November 20, 1772. In the first part of the report, on "The Natural Rights of the Colonists as Men," written by Samuel Adams, we read:

> All men have a right to remain in a state of nature as long as they please; and in case of intolerable oppression, civil or religious, to leave the society they belong to, and enter into another.
>
> When men enter into society, it is by voluntary consent; and they have a right to demand and insist upon the performance of such conditions and previous limitations as form an equitable *original compact*.
>
> Every natural right not expressly given up, or, from the nature of a social compact, necessarily ceded, remains.
>
> All positive and civil laws should conform, as far as possible, to the law of natural reason and equity.[1]

Is it too much to claim that in affirmations and declarations like these, and in the limitations that our constitutions place upon government, we have an unequivocal expression of that doctrine of limited majority government which has found in later years its finished philosophical expression in Herbert Spencer's *Social Statics* and the *Liberty* of John Stuart Mill?

It is not my purpose here to urge that any one of the four great kinds of government is superior to the other three, or that any one is intrinsically more reasonable than another or has a superior warrant in natural justice. I am concerned only to point out certain conditions under which men do as a matter of fact make such assumptions as those which the great political

[1] Wells, The Life and Public Services of Samuel Adams, vol. i, p. 502.

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theorists have made, and do in fact institute one or another of the forms of government, here described, in approximate accordance with their theoretical assumptions. I hope thus to answer the question, submitted at the beginning of my paper, whether the theories in question are substantially true accounts of great and irresistible forces.

Under what conditions then, if ever, are the assumptions that Hobbes, Locke, Rousseau and the American writers respectively make, substantially true? Through the working of what forces do men institute now absolute and now limited minority rule; now absolute and now limited majority rule?

Hobbes assumes a state of nature that is intolerable, and then he further assumes that because of its intolerableness men will unconditionally alienate their natural rights in exchange for peace and order. Now the only question that need concern us, is this: If at any time Hobbes's primary assumption is substantially true, and whensoever and wheresoever it is true, will not men, though they cannot, as he assumes, wholly surrender their natural wills, waive all question of conditions or limits attaching to the exercise of supreme power and thereby set up absolute minority government? Do not all these conditions prevail, and are not the assumptions of Hobbes for all practical purposes true, whenever, through unorganized rebellion, society is resolved into chaos and a reign of terror? Have not such episodes invariably been followed by the rule of the dictator? Have not the passions, the theories and the interests of men under these circumstances conspired to establish and to maintain absolute minority rule? Has the history of the lesser republics in America, notwithstanding their formal imitation of constitutional precedents established by the United States, been essentially different from that of the Greek and Italian tyrannies, or from the dictatorship of Napoleon?

Locke's fundamental assumption is that the state of nature is not intolerable. Holding with Hooker that men are naturally brethren and inclined to coöperate, he assumes, secondly, that they institute government not from necessity but for utility. Under such circumstances they will not make a bad bargain for themselves. It is inconceivable that they should set up or sub-

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mit to any form of absolutism. Whatever government they create and tolerate will be one of limited powers. It will exist by the consent of the governed, and it will be held to responsibility and good behavior. Is it necessary to argue that the whole history of the institution known as "limited monarchy" is an all-sufficient verification of Locke's reasoning? Unlike despotisms, limited monarchies have not sprung out of social chaos. They have come into being as products of an almost imperceptible social evolution, the essential characteristics of which have been a steadily developing mental homogeneity of the people and a growing capacity on their part for spontaneous coöperation, including the practice of self-government.

Minority governments are passing away, and the assumptions that concern us as modern men are those of Rousseau and of the earlier American writers. One or the other of these groups of assumptions carries within it the prophecy of the ultimate democracy. The practical affairs of the vast populations that are destined to dwell within the territorial limits of the federal nations and empires of the future will be conducted under a majority rule that may be a form of absolutism or may be a form of liberalism. Is the ultimate democracy to be a political system wherein the individual must lose his identity through the suppression of the liberties of both individuals and minorities? Or is it to be a political system within which the individual shall be more and more clearly differentiated, and endowed with sacredly-guarded private rights? In a word, are we to have the democracy of solidarity, mechanical, irresistible, ruthless, or, rather, the democracy of individuality, complex, spontaneous, flexible—the democracy of liberty?

The fundamental assumption of Rousseau is perhaps all in all the most interesting one that has been made in political philosophy. It is so strikingly like that of Hobbes, and yet so startlingly different. As Rousseau views them, the relations that Hobbes calls political society did not originate in a covenant, but the relations that Rousseau himself calls society have that origin always. The states of the past have been not societies but "aggregations," hammered together by force and oppression. States become societies, *i. e.*, "associations" rather

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than mere "aggregations," when the relations of men to one another, and between themselves and their governments, are created no longer by force, but freely by contract. So far Rousseau is historically sound. Now his assumptions begin. Men create society by compact to escape, not from a state of nature, intolerable or otherwise, but from a historically established oppression, which is quite as intolerable as the state of nature pictured by Hobbes. To escape from it men unconditionally merge their individual wills in a collective will. At this point Rousseau's thinking is identical with that of Hobbes. In a minor point also it is the same. Both Hobbes and Rousseau assume that under the social compact objecting minorities can rightfully claim no consideration. According to Hobbes they remain in a state of nature, which is a state of war, and they must accept the fate of the vanquished. According to Rousseau they prefer to remain under oppression, and they therefore may not complain if they are oppressed by any power strong enough to deprive them of liberty. Rousseau's doctrine in brief is that mankind escapes from a state of oppression into a state of association only by merging the individual will in a collective will, accepting the will of the majority as identical with the collective will, and permitting the majority to rule absolutely.

Whoever soberly reflects upon these assumptions of Rousseau's political philosophy, is bound, I think, to be startled by the examples that will press upon his mind of the practical acceptance of Rousseau's principles in modern democratic society. Not to dwell on such illustrations as our political system affords, in the unit rule in nominating conventions, in the caucus system, in machine and boss domination, let us look for a moment at the situation in that vast non-political organization, the modern industrial system. The modern trade union is perhaps the most perfect exemplification ever seen of absolute majority rule. Whatever the question, it is considered and decided without the slightest regard for individual interests or the slightest recognition of any individual right that happens to conflict with majority interests. So far as the trade unions can control the situation, no individual, not a member of the organization, is permitted to make his living as a wage-earner, and if

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he comes into the organization, he enters upon terms of absolute submission to its authority. He can make no individual bargain with his employer; he can work only as many hours as the majority dictates, with only such men as the majority permits, and for only such wages as the majority agrees to.

And what justification or extenuation for all this majority absolutism does organized labor urge? What, indeed, but precisely that fact which Rousseau assumed as the original occasion of the social contract with all its consequences—the fact of oppression. The working man avers that without his organization he would, under the wage-system, be reduced to a practical and helpless slavery. And so completely and intensely does he believe this, that he looks upon a non-union workman as the natural and declared enemy of the whole wage-earning class. If a workman will not join in the social compact, merge his will in the collective will and loyally accept majority rule, he is a "scab," living and willing to live under oppression, and, as such, a being without moral rights, entitled to no consideration. When in the light of such facts we reflect how far the labor movement is shaping and will henceforth shape all political movements, we shall perhaps realize how far the majority absolutism of Rousseau has already begun to shape our democracy. The record in detail is little short of astonishing. It is hardly too much to say that Mr. Lecky's history of *Liberty and Democracy* is from one point of view little more than a narrative of the growth in the nineteenth century of majority absolutism.

What then of the assumptions—if any can be discovered—underlying the theory of limited majority rule? And what are the conditions under which we may expect to see a development of that democracy which cherishes individual liberty, believes in minority rights and desires the highest possible differentiation and perfection of individual life? One part of the answer to these questions is immediately obvious. A limited majority rule can never be established or maintained when society is breaking down into a state of "war of every man against every man," nor, on the other hand, when it is so highly organized on a basis of class distinctions that it is prac-

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tically what Rousseau called it, an "aggregation" held together by force and oppression. This observation points to the underlying assumption of writers like Adams and Paine, and other American democratic theorists, and reveals a certain superiority of their insight as compared with the more ambitious philosophizing of Spencer and Mill.

The early American writers assumed that men are born "free *and equal;*" and while they doubtless meant to emphasize the equality that consists in rights, they undoubtedly had in mind also—if not always quite consciously—other kinds of objective equality, such as equality of economic opportunity and an approximate equality of ability. In point of fact such equality is approximately realized under colonial conditions. It was approximately realized in early American life. The land was rich and boundless. Labor was scarce. Any man of force and enterprise could support a family and acquire a moderate fortune. There were no great fortunes; and the state had not yet created artificial personalities of immortal life to dominate the industrial world. The population was made up for the most part of selected stocks, of men and women possessed of sufficient brains, enterprise, courage and idealism to undertake the task of exploiting a new world and creating a new human society. Approximately they were in fact equal and free, as the political writers assumed. As such they did not and could not deliberately institute or desire to maintain any form of absolute power. And there was neither "a natural state" of war, nor any intolerable oppression, other than that of a foreign yoke that might be thrown off, to compel them to establish a government of more than limited powers.

Can we doubt that in these conditions we see the only possible basis of a liberal democracy? Given homogeneity and its concomitant fraternity, given the deliberative mind and with it that general sovereignty which is the supreme expression of intelligent popular power, and given an approximate equality of abilities and of objective conditions, including economic opportunities, must we not have a limited majority rule, observing a due regard for individual rights and liberties, as inevitably as, under oppression, we must have an absolute majority rule?

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Can we escape from the conclusion that if the ultimate democracy is to be liberal, cherishing true freedom and perfecting individual life; there must be a great broadening of economic opportunity,—through public ownership, or otherwise—a wholesale destruction of state-created privilege, a wider distribution of power, and a leveling up of educational attainments?

One final reflection may be offered. If the correlation between modes of the social mind and modes of sovereignty is such as has here been indicated, and if the correlation between forms of government and social conditions is substantially that which our conclusions set forth, may we not argue from assumptions to conditions as well as from conditions to assumptions? The question is one not to be answered hastily, for it is fraught with large issues. If it be true that accepted axioms of political philosophy are products of prevailing experience, there would seem to be no escape from the conclusion that, in this present age, a vast amount of actual oppression has still to be met, and must by one or another means be overthrown. For, beyond any doubt, the accepted political philosophy in this great American Republic is today not that of Adams and Paine, but is rather that of Rousseau. It behooves us then in all soberness to ask whether we have not gone over to the theory and practice of absolute majority rule for the very reason that Rousseau himself postulates when he declares that men sink their individual wills in the general will, hoping thereby to meet oppression with invincible power.

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LEGISLATIVE REGULATION OF RAILWAY RATES

IN order to understand the attitude of the public mind in regard to legislative regulation of railway rates, the present system of competitive rates and its effects upon trade must be understood. Ever since competitive railways have existed, the actual competitive rates, as is well known, have been made by the rebate system. Under this system exactly the same tariff rates are collected from all shippers. Later, a portion of the money thus collected—sometimes five per cent, sometimes ten per cent and sometimes as much as fifty per cent—is secretly returned to some of the shippers, but not to all.

The rebate is the offspring of competition; it is never paid except on competitive business, and it is paid for the purpose of securing traffic which might otherwise be carried by a rival and competing railway. It probably originated with the railways. In the beginning it was confined to the great staples, such as grain, fuel and other commodities, on which the freight rate is several times the possible profit, of the merchant. The *modus operandi* may be illustrated by the grain trade, on which a net profit of one-half a cent per bushel is considered ample. The railway manager who desired to secure a larger share of the grain traffic would select the brightest grain merchant and make a secret agreement to pay him, say, one cent per bushel —twice an ample profit—on all his shipments. Armed with this secret contract, the grain merchant would overbid his competitors one-half a cent a bushel—their entire prospective profit—would "scoop" the business and, by reason of the great volume thus secured, make an enormous profit for himself and a large tonnage for the railway.

The present rebate system is different from the original system. The grain merchant who was first armed with the rebate soon became rich. He built terminal and line elevators, estabtablished his trade relations, bankrupted and drove out of the field all small dealers and controlled a vast volume of traffic.

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Then he turned on his original railway benefactor. He refused to accept a beggarly one-cent rebate or, as a favor, any other rebate. By the right of his ability to turn trade to the rival company which he first robbed, he demanded, not one cent, but two cents, three cents, five cents or even ten cents; and the expert traffic manager who first invented the rebate had no alternative but to stand in the merchant's ante-room, with hat in hand, humbly asking upon what terms the merchant would "give" his line a share of his shipments. Thus the merchant became the rate-maker instead of the railway company.

No matter how carefully the secrecy of the rebate was guarded, grain merchants could not thus become rich and powerful without the source of their wealth becoming known. Merchants in other lines, controlling a considerable volume of traffic, saw the chance of playing one competitive line against another and making the railways bid also for their trade. And thus the present system of making rates by rebates was established.

Prior to the passage of the Interstate Commerce law in 1887, the system of making competive rates by rebate had been so universally established over the whole country that the Senate committee which, after months of public investigation, reported the bill, said:

> The practice prevails so generally that it has come to be understood among business men that the published tariffs are made for the smaller shippers and those unsophisticated enough to pay the established rates; that those who can control the largest amount of business will be allowed the lowest rates.

To such an extent had the system developed, that substantially all the smaller men had been driven out of the grain-shipping business, and the fuel and kindred trades. The shipments of all the great staples of the country had become monopolized in the hands of the few, who had accumulated enormous fortunes based upon the absolute ruin of competitors; and these monopolies controlled so large a volume of traffic that they, more frequently than the railways, dictated the rates they would pay.

The investigations of the Senate committee brought out some

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astounding facts. It was conclusively proved that as long as the secret rebate system prevailed no mercantile or manufacturing business was safe. No matter how large a volume of traffic was controlled or how large a rebate was commanded, none could tell how soon some new combination would arise which would control a volume of traffic so much larger that it would be able to dictate, not only what rates it would pay, but how much higher rates others should pay, and what part of the rate that others paid should be turned over to itself as an additional rebate.

This precise thing has been done. Before the enactment of the Interstate Commerce law, it was proved in court that there was a combination so powerful that it compelled a railway to collect from all shippers in its line of trade a uniform rate of thirty-five cents, and to pay to it a rebate of twenty-five cents, not alone on its own shipments, but on the shipments by all its competitors. It may be safely estimated that there have been periods when the rebates paid by all the railways to the larger manufacturers and merchants have amounted, in the aggregate, to not less than one hundred million dollars yearly. Meanwhile all the smaller manufacturers and merchants were paying full tariff rates. Such were the conditions which contributed to the crushing of the smaller manufacturers and merchants, and which compelled combination.

It would be unfair to the reputation of the men who have been in charge of railway traffic to leave it to be inferred that they have been so far outwitted by their customers as to allow the revenues of their companies to be depleted to the full extent of the vast amounts which have been paid in rebates. As a rule, they have been faithful to their companies, and they have succeeded measurably in protecting their revenues by keeping the published tariff rates so high that, after paying such rebates as they could not avoid, there was enough left to keep their companies from bankruptcy and "the pot boiling."

It must be borne in mind that the cost of transportation does not come from the pockets of the manufacturers and merchants. Whatever rates they pay are added to their prices and recouped in their sales. Hence they are not concerned as to the amount, within bounds, which the railway companies receive for trans-

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portation. They are only interested in relative rates; and as long as they get rebates they care not how high the tariff rates are made. Indeed, the higher the tariff and the larger the rebates, the more complete is the protection to their monopolies. Attention should be called also to the fact that, as long at least as there are any smaller competitors in the field, the monopolies must, as a rule, give to the consumer the bulk of the rebates they receive, by concessions in their selling prices, because if they do not sell cheaper than the smaller competitors they will lose their monopolies. What they will do after all competitors are out of the field is another question. But, as long as there are competitors, the masses who, when they buy food or clothing or any of the luxuries or necessities and when they build houses or pay rent, necessarily, though unconsciously, pay the railway rates, will not be materially affected by the continuance of the unconscionable rebate system. Hence it is not the masses who ultimately pay the rates who are immediately interested in destroying the rebate system. The persons immediately interested are the men of small means who have invested their moderate competencies in manufacturing or commercial pursuits, and who are being crushed out by the rebate system; the young men who desire to enter manufacturing or commercial enterprises; the fathers who hope that their sons may sometimes rise above the rank of employees. Indeed, the demand by the masses for legislative control of rates is not based upon the proposition that the average rates now actually collected are too high, but upon the outrageous discriminations now practiced by the use of the rebate and kindred devices.

If the disease has been properly diagnosed, what is the remedy? For nearly half a century the railway companies have tried to abolish the rebate system by agreement amongst themselves not to pay rebates. To destroy such agreements it has not been necessary for the large shippers even to make a protest. They have only to route all their shipments over one of the competitive lines and pay the full tariff rates. Immediately thousands of stock-exchange tickers announce the increase in earnings of the favored line and the decrease in earnings of all the others. Tick, tick, tick, up go the stocks of the favorite,

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and tick, tick, tick, down go the stocks of the others. No management can stand against such attacks through the ticker. It has no alternative but to apologize humbly for the strike and agree to pay a still larger rebate in the future. The strike being thus ended, the commercial magnates have only to turn their whole traffic to the lines which have surrendered, in order to obtain full rebates on the traffic which the single line had carried during the strike under the impression that it was getting full tariff rates. It has thus been proved by experience that an agreement among the railways to maintain tariff rates and pay no rebates is not a remedy.

Would consolidation of all the railway companies into one huge corporation be a remedy? It seems altogether probable that the autocracy thus created would be strong enough to defy rebate-seekers. Whether it would destroy rebates would depend to some extent upon the personal interest in manufacturing and commercial enterprises of the railway czar and of the grand dukes, his bankers, his uncles, brothers, brothers-in-law, sons and sons-in-law. If the reign of the first czar should be benign, what would be the character of the reign of his hereditary successors? The disclosures of the insurance investigation are not reassuring.

The autocracy would necessarily be localized somewhere, probably in New York city, thousands of miles from many of the activities which are dependent upon railway transportation. It would entail upon the country evils akin to, if not essentially identical with, the evils of absentee landlordism, which has cursed Ireland, Russia and all the countries in which it has existed. Out of touch with the activities and the aspirations of distant communities, the czar would expect his managers to make present returns as large as possible, letting the future take care of itself. The ticker is always crying: "More, more!" Consolidation has already reached a stage which produces many complaints. It is alleged that no person authorized to act in redressing a wrong, or in meeting the needs of a new industry, can be reached without undertaking a journey across the continent and humbly submitting the case to the unsympathetic decision of the "unconscious arrogance of conscious power."

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If, as is by no means certain, autocracy would be a remedy, the remedy may well be regarded as worse than the disease. With a grand duke in control of each of the great combinations which now command rebates, and the czar getting a "rake-off" as stockholder, or otherwise, from all, it does not seem probable that the chances of individual enterprise would be improved.

Would legislative control of rates be a remedy? It is a distinguishing characteristic of the American mind that it seeks to remedy every economic evil by passing a law. The average mind regards the enactment of the law as sufficient. The average mind is always in favor of enacting a law, but after the law is enacted the average mind is opposed to its enforcement. And when such a law has been enacted and no attempt has been made to enforce it and the evil continues to exist, the demand of the average mind is not to enforce the existing law but to enact a new law. Besides, if the statutes of this class be examined, it will be found that the average legislative mind possesses the same reverence for enactment and the same disregard for enforcement, and that, consequently, none of the statutes contains proper provisions for enforcement.

If it were not for these well-known characteristics, the fact that the Interstate Commerce law has been in existence for more than eighteen years without results would be evidence that legislation is not a remedy for the rebate system. This law forbids in the most comprehensive language the rebate and other kindred evils, but it provides no adequate instrumentalities for its enforcement. Besides, its penalties are in many cases so out of proportion to the offence that this enforcement cannot be expected. For illustration: under this law, as originally passed, if a man rides on a pass from New York city across the state line into Connecticut he commits a misdemeanor, punishable by a fine of not less than $1,000 nor more than $5,000, or by imprisonment in the penitentiary for not less than one year nor more than five years, or by both fine and imprisonment, in the discretion of the court, for each ride. A later amendment abolished the prison penalty and made the fine not less than $1,000 nor more than $20,000. The same penalties are imposed for paying rebates; and under the original law

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these penalties ran, not against the railway company which paid the rebate and reaped the profits from the traffic which the rebate secured, but against the minor traffic agent, who, on a salary of perhaps $2,500 per year, was supporting a family, and who, it might be claimed, had by a wink or a nod or by absolute silence agreed to pay the rebate. The writer was present at a controversy between a shipper and such an agent as to whether the agent had agreed to make the rebate claimed, and heard the following dialogue:

Shipper. I spoke to you about the rebate at the time.
Freight Agent. Yes, but I said No.
Shipper. I know you said No, but there was a queer look in your face which I thought meant Yes.

On this evidence the rebate was paid in the interest of future traffic from the same shipper. What American jury would fine or imprison a man for having a queer look in his face when he said No?

In one of the outbursts of public excitement which have periodically occurred since the enactment of the law, one poor fellow was convicted; but the conviction so outraged common decency that the president promptly pardoned him. Speaking from recollection, this is the only conviction under the law in the eighteen years of its existence.

Under the original law the penalties ran only against the payers of rebates, but a later amendment imposed the same penalties "for soliciting or receiving a rebate." This seemingly just amendment made it well nigh impossible to convict anybody, because the rebate crime is, as a rule, known only to the giver and the receiver. Neither party can testify against the other without incriminating himself, and this, under the provision of the federal constitution, no witness can be compelled to do. This predicament necessitated another amendment, which required both parties to testify, and avoided the constitutional provision by guaranteeing absolute immunity from prosecution for offences which such persons might disclose either to the Interstate Commerce Commission or to the courts. Since the passage of this amendment, the giver or receiver of a rebate has

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only to confess to become immune and to render both the Interstate Commerce Commission and the courts powerless to enforce the penalties of the law.

Under the Elkins amendment, the penalty of imprisonment was abolished, and the fine of not less than $1,000 and not more than $20,000 was imposed upon the railway companies themselves as well as their officers and agents, and upon those who may solicit or receive a rebate. This amendment was passed in 1903, and no convictions have yet been made. It is a disputable question whether a railway company will be immune against penalties if it produces its books or other testimony in court. A case involving this question is before the Supreme Court.

It is needless to add that the law has had little effect upon the rebate system. At the time of the first enactment, which was during a period of intense public excitement, and at the time of each subsequent enactment, and since the president has become "perniciously active" in attempting its enforcement, there have been, not organized and effective revolutions, but just common ordinary strikes against the rebate system. Like all strikes, they have lasted only as long as the excitement has lasted.

Notwithstanding the failure of the Interstate Commerce law during eighteen years of trial, it is the conviction of the writer that it is possible to frame a reasonable and just law, with reasonable and just provisions for enforcement, which would be effective. Such a law can not, however, be draughted off-hand, with a few days or even a few months for its consideration, during a period of excitement amounting almost to hysteria.

A law intended to establish and enforce just and reasonable rates must be framed with reference to the fundamental facts which are the basis of such rates. A great deal of intelligent investigation has been devoted to ascertaining the principles of economic operation, but no investigations have been attempted in respect to the fundamentals of reasonable rates. Ask the expert traffic official what is the basis of reasonable rates and by what method they can be ascertained, and, if he regards the question seriously, he must confess that he does not know. Ask the doctrinarians who write books, and they must confess that they do not know. The fact is nobody knows; nobody

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has the basis, the formula, or even a theory. Have reasonable rates relation to the cost of producing transportation, or to the interest on the fortuitous capitalization of each railway company? Is a railway company entitled to earn reasonable profits on cost of production, or reasonable interest on securities issued? Nobody knows. The people, the legislators and the courts are at sea upon these fundamental propositions. All is mystery.

If there are such things as reasonable rates, they must be based on something, have relation to something, which, by investigation, can be ascertained and demonstrated. If there are no such things, then in enacting laws which declare, as the present law declares, that "all rates shall be reasonable and just and that all unjust and unreasonable rates are unlawful," Congress simply enacts a moral rule which no one will dispute and which no one can interpret or apply. If laws of this class, making those things criminal which the day before their enactment had been regarded as lawful, are to be enforced, they must be intelligible and explicable, so as to appeal to that sense of justice which is innate in the American people.

It is probable that such an investigation as is here suggested would prove that the net rates—the remainder of the rates after deduction of the rebates—are the reasonable and just rates which should be made the tariff rates, open to all shippers alike.

It would therefore seem to be a wise procedure for Congress to provide an interstate commerce investigation committee, composed of, say, seven members; four members to be appointed by the president, and three members to be appointed by the railway companies. One member should be a sound lawyer; one a mathematician; one an experienced railway auditor; one an engineer of capacity, experienced in calculating costs of transportation; one a superintendent, experienced in the actual movement of trains and of rolling stock; one a station agent, experienced in the details of station or terminal service; and one a traffic manager, experienced in present rates. The committee should have authority to demand from the railway companies a new line of statistical facts which have never been compiled, relating to costs, and particularly to relative costs as between the different conditions under which com-

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modities are transported. To give a single illustration: the committee should demand statistics showing the commodities which require, under certain conditions, the hauling of only half a ton of non-paying car to each ton of pay-freight and, under other conditions, the hauling of three or four tons of non-paying car to each ton of pay-freight. The statistics should cover all the relations of weight of car to weight of load which this illustration suggests. There are other lines of facts which, like those just cited, would need only to be mentioned to show their relevancy to the problems to be investigated.

The investigation should be systematic and thorough; it should, above all, be public; and the results should be published from time to time so as to keep the public informed during the progress of the work, and to permit public discussions in the newspapers and elsewhere. There is no corrective influence so powerful as publicity; no other agency can secure thorough comprehension of the facts and proper control of the inferences.

After, but not before, such investigations, publications and discussions—if there remained evils which such investigations, publications and discussions had not remedied—it would seem possible to frame legislation which would be recognized as just and intelligible and which would accordingly prove to be enforceable.

A. B. STICKNEY.

ST. PAUL, DECEMBER, 1905.

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BALLOT LAWS AND THEIR WORKINGS

NO political movement in this country ever made more rapid progress than that which had ballot reform for its object. Starting with the passage of the Australian ballot law in Massachusetts, in 1889, the idea spread from state to state until, at the presidential election of 1892, no less than thirty-five states were using the officially printed secret ballot in some form, and now all but three are on the list. It was perhaps natural, however, in view of the particular evils which this reform was intended to combat, that its advocates should have concentrated their attention almost wholly on the prevention of trickery in the preparation of ballots and the protection of the voter in the free exercise of the franchise. While the fight was on to secure these essentials, all other aspects of the question were regarded as of secondary importance. Thus, when it was once assured that the ballot should be printed by the public authorities, that the voter should have an opportunity to mark it in private without anyone else knowing how he voted, that it should be duly checked and correctly counted once and only once in the presence of representatives of all parties, it did not so much matter in what particular fashion the ballot was printed nor how the names on it were arranged. On these points, therefore, there have always been the widest differences. It is the purpose of this paper to show not only that the form of the ballot has a very powerful influence on the results of elections, both as regards the freedom of the voter in making his choice and the accuracy with which he records it, but also to bring out, so far as possible, the precise effects produced by each variety of form.

It is pointed out by Bryce and others as one of the advantages of our system of state governments that these commonwealths can make political experiments of all sorts and profit by one another's experiences. In this matter of ballot legislation they have certainly exercised to the full their prerogative of experimenting. State legislatures are perpetually tinkering their ballot laws in one particular or another. It cannot be said, how-

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ever, that they have profited by each other's successes and failures. In the changes made no general tendencies are to be observed. Indeed, in the last few years, it has occasionally happened that two state legislatures have almost simultaneously taken action of diametrically opposite effect, each one adopting with high hopes a form of ballot which the other was just abandoning in disgust. To-day, after seventeen years of experience, the diversity of legislation in this country is certainly as great as when the secret ballot was a novelty.

Take the mere matter of size and shape. The voter in Wisconsin unfolds in the booth a huge blanket sheet which in 1904 measured thirty-five inches by twenty-four. In Florida in the same year he made his marks on a narrow strip three and one-half inches wide and thirty-two and one-half inches long. From these the styles run all the way down to the sheet of hardly more than note-paper size used in Maine (10 x 8) and Oregon (8 x 12). A number of the states undertake to help out the illiterate voter by a picture gallery of party emblems, but even in this no party adheres everywhere to one design. The Socialists come nearest to uniformity, two clasped hands in front of a globe being their emblem in Alabama, Delaware, Indiana, Kansas, Kentucky, Louisiana, and New Hampshire; though a torch heads their column in Michigan, Ohio, New York, and Utah. The Prohibitionists are at the other extreme. The only emblem on which any two of their state organizations agree is the sun rising over a body of water. This emblem is used in Indiana and Kansas. They have hatchets in Alabama, a house and yard in Delaware, a phœnix in Kentucky, an armorial device in Michigan, an anchor in New Hampshire, a fountain in New York and a rose in Ohio. The Populists show nearly as much variety, using a combination of plough, pick and saw in Alabama, an anvil in Delaware, a liberty bell in New York, a plough in Indiana and Kentucky, a frame cottage and a tree in Kansas, a factory marked "producers unite" in New Hampshire, and a flag-covered box labeled "Jefferson, Jackson and Lincoln" in Michigan. An eagle is the commonest device of the Republican party and a gamecock of the Democratic; but the former party is represented by a statue of Vulcan in

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Alabama, a log cabin in Kentucky, an elephant in Louisiana, and a portrait of Lincoln with the flag as background in Michigan, while the Democrats have a plough in Delaware, a flag in Michigan, and a star in New Hampshire and New York. On more important statutory details there is just as wide disagreement. The voter must use a rubber stamp in California, Indiana and Louisiana, ink in West Virginia, an indelible pencil in Maryland, a black lead pencil in New York. He makes his mark at the right of each favored candidate's name in California, Idaho, Kentucky, Massachusetts, Mississippi, Nebraska, New Hampshire, Pennsylvania, Rhode Island, Vermont, Washington, Wyoming, Louisiana, Colorado and Utah; to the left in Alabama, Illinois, Indiana, Iowa, Michigan, Montana, New York, North Dakota, South Dakota, Oregon and Ohio, and under the middle of the name in Wisconsin.

These superficial dissimilarities, however, merely reflect the diversity that exists in regard to fundamentals. The especial point to be considered first is the relative ease with which under different ballot laws a split ticket and a straight ticket may be voted. So far as this matter is concerned, the mere shape and mechanical arrangement of the ballot is by no means decisive. As will appear later, two states may have official ballots practically identical, so far as the printer's work is concerned, and yet, by reason of the statutes prescribing the method of marking, one of these may offer the greatest encouragement to the independent voter while the other puts the heaviest penalty on all but the straight party man.

For the purposes of classifying such enactments we will take in each state the hypothetical case of two voters: A, who desires to vote the straight Republican ticket, and B, whose choice falls on a Democrat for governor and Republicans for all other offices. At our imaginary election there are to be chosen ten presidential electors and ten state and local officers. In many of the states B, the independent voter, has the choice of several methods of recording his preferences. Where such choice exists, it is here presumed that he will choose the method involving the least mechanical difficulty or labor. Generally speaking, the independent voter is the intelligent voter, and after

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informing himself of the provisions of the ballot law in his state, he will save himself unnecessary trouble by taking the shortest cut.[1]

The commonest ballot is the party-column type, modifications of which were used in twenty-three of the forty-five states at the last national election. These all agree in having the full ticket of each party printed in a single column, usually so arranged that all candidates for a given office have their names in the same horizontal line. In voting such a ballot five different methods are in vogue.

1. A makes a separate mark opposite each of the twenty names in the Republican column. B makes nineteen in that column and one opposite the Democratic nominee for governor. This is the rule in Montana.

2. A makes a single mark at the head of the Republican column. B does the same, and makes an additional mark opposite the name of the Democrat for governor. This is the rule in California, New York, North Dakota, Washington, South Dakota, Illinois, Ohio, Wisconsin and Kentucky.

3. A makes a single mark at the head of the Republican column. B does the same, then draws a line through the name of the Republican candidate for governor, and makes a mark opposite the Democrat. This is the rule in Michigan, New Hampshire, Utah, Wyoming, Idaho and Alabama.

4. A makes a single mark at the head of the Republican column. B makes twenty marks, one opposite the Democrat for governor and nineteen opposite the names of all other officers in the Republican column. This is the rule in Iowa, Louisiana, Kansas, Vermont and Indiana.

5. A designates the Republican column (either by a cross or by drawing a line down the others). B does the same, and then inserts the Democratic gubernatorial candidate's name in that column, either by paster or by writing it in, although that

[1] This is not necessarily true, however. In New York, for instance, some questions regarding the meaning of the ballot law have never been judicially determined, and it is said that for this reason many lawyers invariably adopt a method of splitting their tickets which, while more difficult than one of those prescribed by the directions of the ballot, is certainly authorized by the dubious phraseology of the statute.

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name is already printed on the ballot in an adjacent column. This is the rule in Delaware, Maine and West Virginia.

6. The next form of ballot is virtually the foregoing one cut into strips. The voter receives a bundle of official ballots, one slip for each party. A deposits the Republican slip without alteration. B pastes or writes in the name of the Democrat for governor. This is the rule in Connecticut, Missouri, New Jersey and Texas.[1]

7. Georgia, North Carolina and South Carolina are the three states which have no official ballots. The candidates or party organizations usually prepare and distribute the ballots, which may be written or printed or partly written and partly printed. A and B can prepare the kinds they want in any way they please, conforming merely to certain regulations regarding size and quality of paper.

The fourteen remaining states arrange the names on the ballot by offices instead of by parties. There are six varieties to be noted.

8. The names of candidates for each office are placed within a separate "box" or printed margin, arranged in alphabetical order, and each followed by the name of the party making the nomination. A and B must both pick out and mark their candidates one by one. (They will make eleven marks apiece if there is provision for voting all ten electors at once, and twenty marks apiece if there is not.) This is the rule in Massachusetts, Rhode Island,[2] Oregon, Nevada and all but eleven counties of Maryland.

9. The names within the "boxes" are not arranged alphabetically, but in the same order of parties for each office. The party name is printed after each name. Thus A finds the Republican candidates invariably first on the list (or second, as the case may be), and B can follow the same uniform rule except as regards the governorship. This is the rule in Minnesota.

[1] The Texas legislature has since passed a law providing a ballot of the party-column type to be voted by striking out the names of all candidates except those favored.

[2] The legislature of 1905 abolished this in favor of a ballot of type three.

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10. The names are not in alphabetical order, and those for each office are merely printed in a close group without the ruled line to separate them. Instead of marking opposite the desired name, the voter strikes out all except that one. A and B thus make the same number of erasures. This is the rule in Arkansas and Virginia.

11. The names are grouped by offices, but the party of each is not designated. This is the rule in Florida, Mississippi, Tennessee and eleven counties of Maryland.

12. There is a "box" for each office, the names are arranged in alphabetical order with party designation, but across the top is printed, "I hereby vote a straight ——— ticket, except where I have marked opposite the name of some other candidate." A simply writes the word "Republican" in the blank. B does the same, afterwards making a mark opposite the name of the Democrat nominated for governor. This is the rule in Colorado.

13. There is a "box" for each office with party designation, but somewhere on the ballot a space is provided for voting a straight ticket of each party. The electors are so arranged that all can be voted by one mark. A makes one mark in the straight ticket space. B makes eleven marks, picking out his candidates from each party group. This is the rule in Nebraska and Pennsylvania.[1]

Thus at one extreme are the states in which the independent voter in the hypothetical case is put to twenty times as much mechanical labor in voting as the hide-bound partisan, and at the other extreme, those in which the two are put to exactly the same amount of trouble in voting. Iowa and Montana have ballots which look as much alike as the pages of two conserva-

[1] Some of the changes of the last ten years are indicated by comparing the above list with the classification contained in the *Nation* of January 4, 1894. Ballot-reform laws had then been passed in thirty-six states of which thirty-three had blanket ballots. "Alphabetical order:" Alabama, Arkansas, California, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, Wisconsin, Washington, Wyoming. "Party group and name:" Illinois, Iowa, Kansas, Maine, Missouri, Pennsylvania, West Virginia. "Group, name and emblem:" Colorado, Delaware, Indiana, Kentucky, Maryland, Michigan, Ohio. "Separate ballots:" Connecticut, New Jersey, New York.

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tive newspapers, yet they are at opposite poles as regards the premium they put on straight ticket voting.

The Colorado ballot, but for a single printed line, would be extremely like that of Massachusetts, yet, it really stands on an exact parity with New York's or Ohio's as regards the ease of split ticket voting. Pennsylvania's ballot does not look like that of Kansas, yet, on analysis they are seen to differ essentially only in the provision which lets the Pennsylvanian vote for all the state's presidential electors at once, by a single X mark.

To determine just how much influence these differences actually have on the result of elections, it is only necessary to examine the returns classified on the basis here outlined. In only a few states is a report made of the total of straight and split tickets voted, but there are several ways in which the proportion can be approximately ascertained. The method adopted in preparing the tables which follow, may best be explained by an example. In Kansas, for instance, in 1904 the Democratic candidate for governor had 38.52 per cent of the combined Republican and Democratic vote, while on the presidential vote of the two great parties the Democratic percentage was only 28.67. The difference between these figures, 9.85 per cent, may be taken to represent the net amount of independent voting as between the presidency and governorship. Obviously the result would be the same if figured from the Republican percentages. In this instance the Democratic state candidate who ran farthest ahead of his ticket was the nominee for state treasurer with 45.18 per cent of the combined vote of the two great parties. The insurance superintendent had the smallest proportion, 37.68. The difference between these is 7.5 per cent. A third figure has been obtained in every case by comparing the vote for the minor state offices, omitting governor, and a fourth by subtracting each party's worst from its best—in this case, insurance superintendent and presidential elector, giving 16.59 per cent.[1]

[1] It is evident that by this method the amount of independent voting can never be overstated, while it may be materially understated in some cases. For example, in

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The groups include every state which chose any state officers at the same election with presidential electors in November, 1904, except in a few southern states where there was practically no opposition party.

I. Each candidate to be marked separately, unless all are on one party ticket, when a single mark suffices:

	President and Governor	Widest Range	State Offices	Minor State Offices
Iowa		1.10	.34	.34
Louisiana	1.99	.99	.29	.29
Kansas	9.85	16.51	7.50	7.50
Indiana	.80	.80	.43	.06
Average	3.88	4.85	2.14	2.04

II. A name to be written in or pasted for every candidate voted not on one party ticket:

	President and Governor	Widest Range	State Offices	Minor State Offices
Connecticut	3.43	3.43	2.96	.88
Missouri	5.25	5.25	4.36	1.23
New Jersey	3.56	3.56		
Texas	6.96	6.96	.51	.05
Delaware	1.77	1.77	.67	.17
West Virginia	5.27	5.27	3.46	.39
Average	4.24	4.39	2.39	.54

III. An additional mark and an erasure to be made for every candidate voted not on one party ticket:

	President and Governor	Widest Range	State Offices	Minor State Offices
Michigan	17.01	17.01	12.58	2.07
New Hampshire	2.24	2.24		
Utah	7.92	7.92	4.14	.73
Wyoming	10.34	10.34	2.70	1.76
Idaho	4.91	4.91	4.90	1.49
Average	8.48	8.48	6.08	1.51

IV. An additional mark to be made for every candidate voted not on one party ticket:

states like Missouri and Wisconsin, where ticket-splitting took place, so to speak, in both directions, the figure here will represent merely the net result and not the total amount of such selection.

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	PRESIDENT AND GOVERNOR	WIDEST RANGE	STATE OFFICES	MINOR STATE OFFICES
New York	3.08	3.08	1.88	1.05
North Dakota	4.54	4.54	2.63	1.45
Washington	22.63	22.63	11.39	6.24
South Dakota	3.29	3.29	1.07	.22
Illinois	.45	2.55	2.10	2.10
Ohio		2.00	.12	.12
Wisconsin	12.99	12.99	6.23	1.96
Colorado[1]	9.43	9.43	5.68	2.42
Average	8.06	7.30	3.88	1.94

V. Each candidate to be marked separately in every case:

	PRESIDENT AND GOVERNOR	WIDEST RANGE	STATE OFFICES	MINOR STATE OFFICES
Massachusetts	15.00	15.00	13.90	5.92
Rhode Island	11.87	11.87	9.83	6.28
Minnesota	31.07	31.07	20.29	11.32
Montana	18.38	18.38	9.60	3.95
Nevada		14.27	.87	.87
Average[2]	19.08	18.11	10.89	5.66

[1] Computed from returns as originally certified. The throwing out of precincts in the Adams-Peabody contest would affect the absolute but not greatly the relative pluralities.

[2] For the sake of comparison the notable instances of independent voting in past years may be computed in the same way. In 1888 when Hill was elected governor of New York, though Harrison got the electoral vote of the state, the difference was only 1.31 per cent. In 1892 when Massachusetts elected Russell governor while supporting Harrison, the difference was 3.8 per cent. In 1900, the state of Washington elected Rogers governor while choosing McKinley electors, the difference being 6.2 per cent. These were the only cases in the last five elections of any state's choice of a governor of one party and electors of the other. Lind in Minnesota was beaten for governor in 1900 by 2,470, though McKinley carried the state by 76,963. This meant 12.4 per cent of ticket-splitting. This banner performance was surpassed in five states in 1904. The results of the 1905 election in New York City also deserve mention. The election of Mr. Jerome for district attorney, though he was independently nominated and his name did not appear in any of the regular party columns, was an event probably without precedent in any community using a ballot similar to that of New York. The method of computation used in the tables can not be applied to this case. However, nearly every Jerome vote must necessarily have been on a split ballot, and his percentage of the total vote for district attorney, 38.6, may serve as an approximate measure of the discrimination exercised in this remarkable election. At the same time the 13,348 votes received by the Republican candidate who had formally withdrawn were monuments to the influence of the straight-ticket circle. Jerome's own large vote was only made possible by lavish advertising to show how a split ticket might be voted in his favor.

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The most important point brought out by these figures is that, in the states where the marking of each individual candidate is compulsory, the voters—whichever column be taken as the basis of comparison—have exercised more than twice as much discrimination among candidates as in any other group, and from four to ten times as much as in the lowest group of each column.

Next after these stand the two groups of states in which, while the straight ticket voter is favored by being allowed to record his choice at a single operation, the split ticket voter is not put to the necessity of marking his presidential electors one by one. There is no considerable difference between the figures for the two groups, however. It does not apparently act as a deterrent to require that the voter who marks a name outside of his chosen column must also obliterate the corresponding name in that column. In fact it seems to work the other way. This can be explained on psychological grounds. It simply "seems natural" to scratch out the name of the rejected candidate and makes assurance doubly sure that the voter's intent will be understood and the vote as marked correctly counted. This consideration appears to compensate fully for the additional labor involved.

Of lowest rank in respect to the amount of independent voting are the group of states which require writing in or pasting of names when the voter favors nominees of more than one party, and the group which, while letting off the straight ticket man with one mark, impose on the independent the drudgery of marking every presidential elector as well as state and local candidates. One very important difference is to be noted, however, between the figures for these two types. While a fair amount of independence is shown by voters in the former group it is almost solely with reference to one office, the governorship. The discrimination among minor state offices is relatively much less than in any other group. In the split-ticket mark-all group, though in only one of the four states was there any considerable amount of independent voting, there was proportionately more difference as regarded these minor state officers. Both these forms put a somewhat heavy penalty on independent voting, the

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difference being that in one case the penalty is cumulative, while in the other it is not. For the Missourian who picks out a Republican ballot, it is exactly twice as much trouble to vote for two Democrats as to vote for one. On the other hand, for the Iowa Republican, while it is a troublesome matter to vote for any Democrat at all, there is no extra difficulty in voting for two, three or four. In the first case there may be many voters who scratch one or two important names on their party ticket, but few who will do more. In the latter, though the number who vote split tickets at all may be small, a good proportion of these, having taken the plunge, make the utmost use of their opportunity by scrutinizing all the candidates closely.

These figures furnish no evidence that the arrangement of names in alphabetical order when grouped by offices has any effect to encourage the disregarding of party lines. Nor is there anything to show that the group by offices itself—in spite of the general impression to that effect—is any more favorable to independent voting than the party-column plan, provided the rules for marking are the same. The data here are admittedly insufficient to warrant any general conclusion, but it is worthy of note that the state which stood at the head of the list in respect to independent voting in 1904 was one in which the alphabetical order did not prevail, and the one which stood third in "greatest range" used the party column, though without the straight ticket circle.

It is of course, true that the states in which a strong sentiment of non-partisanship exists are the ones likely to adopt ballot laws which will encourage independent voting and *vice versa*, so that what appears as effect may be in reality partly cause. Moreover it is self-evident that, unless there is some reason for preferring certain particular nominees of different parties, voters will not have occasion to split their tickets, no matter how easy that process is made, while if there is a burning issue, they will not be hindered by any petty difficulties. But the comparison by groups minimizes the force of these objections. No one probably, if asked to name the five states of most independent proclivities in politics, would pick out those placed in the last group, yet the lowest of these makes a showing for discrimination in

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voting which is only equalled by three others outside of this particular group. Only that number, in fact, can be said to be important exceptions in the groups where they are placed. Were Washington, Michigan and Kansas to be omitted, the results of the tabulation would be still more striking.

Of special significance is the fourth column, in which is shown the degree of discrimination exercised by voters in filling the minor state offices. The head of the state ticket naturally has a very prominent place in the campaign, and his popularity or unpopularity alone is likely to affect largely the first three figures which represent the independent voting of a state. As a matter of fact, in all but one of the states in which that office was to be filled, in 1904, the candidate for governor was either the most or the least successful of his party's state candidates. The scanning and selection of the lists of less important officers, however, is as sure an indication as could be devised of really intelligent and independent voting. Moreover, as regards these tickets, there is no reason to suppose that there would be much difference in the material to choose from in the various states. It is certain that everywhere some men on the state ticket will be better than others. That the differences are more pronounced in this than in the other columns is strong proof of the important part which the ballot itself plays in inducing voters to disregard party lines in recording their preferences.

Under a popular government we can hardly do otherwise than assume that the voter goes to the polls with some sort of distinct idea in regard to the candidates to be voted for. It is plain, however, that some of his preferences are so slight or so vague that he will record them if it is convenient to do so, but waive them if he is put to extra trouble on their account. Those who believe in the straight-ticket circle or square always assert that it is merely a convenience to the straight-ticket man and not in any sense a deterrent to the independent. They are fond of pointing ont the almost ridiculously small amount of labor which the voting of even the most complicated ticket involves.[1] The important effects produced, as we have seen,

[1] "It cannot reasonably be said that because one voter may more quickly prepare

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by apparently trivial differences, are seemingly to be explained by considering the voter's fear lest his ballot be invalidated by an error in marking it. In a state like New York party watchers at the polls are provided with little books describing the various combinations of marks which may and may not be counted, and many cases arise in which determination is a difficult matter. Unfortunately statistics of the number of rejected ballots are available in very few states, and even when published cannot fairly be compared by reason of the different provisions governing the throwing out of ballots.

Other things being equal, many more votes will be thrown out in a state where any technical error invalidates than one where the rule is to count whenever the voter's intent can be determined.[1]

Some indications on this point, however, are furnished by the returns for presidential electors in the several states. As commonly published the "presidential returns" are made up simply by taking in each state the vote for the highest elector of each party. How much higher this vote is than that for the corresponding lowest elector is seldom noted in the almanacs and often not even in the officially published returns. Yet there is

his ballot than another the election is not free to both alike. Each votes as freely as the other, but in doing so the one who, in a spirit of independence and in the exercise of his absolute right to be independent, makes up his own ballot must and does consume more time than the other. This, however, is no interference with his freedom as an elector. It is the very freedom of the election that enables him to mark his ticket just as he pleases, or to make it up without regard to any name that may appear as a candidate on the ballot handed to him." (Majority opinion Pennsylvania Supreme Court, on test of constitutionality of party square, May 8, 1905.) "It may well be doubted whether the practical workings of the circle have been, as so many assume, to restrain voters from picking and choosing their candidates." (Comment of an important western newspaper.)

[1] Estimates of state authorities run from "a fraction of one per cent" in New Hampshire, and one per cent in Wisconsin, to three per cent in Iowa and five per cent in West Virginia. In Connecticut, where 191,829 were checked as having voted, 1,330 general and 777 local ballots were rejected for all causes. In Rhode Island, of 74,460 ballots cast, 898 were classed as "defective" for governor. There were 2,903 void or rejected ballots out of 438,179 in New Jersey. The dissenting opinion of Justice Dean in the Pennsylvania "party square" case states that "in the general election of last year (1904) more than 100,000 voters in Pennsylvania cast defective ballots."

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almost always a considerable gap. Occasionally in a close election it is so wide that the leading elector of the minority party gets in ahead of the "tail-ender" on the winning side. In Maryland last year, the first Democratic elector came in ahead of all but the first Republican.

The returns from all but three states show that of the voters who wanted Theodore Roosevelt for president, the astonishing number of 43,650 failed to vote for the full number of Roosevelt electors to which their states were entitled. Democrats to the number of 24,168 similarly missed one or more of their party electors, as did 2,982 Populists, 3,479 Prohibitionists, and 5,411 Socialists.[1]

The presidential elector under our system has absolutely no discretionary power and his personal qualifications cannot in any possible way affect the coming national administration. The worst a bad man in that position could possibly do—and none has ever done it yet—would be to let himself be bought off or desert. Even then it would not help matters to scratch his name at the election. It is a nice point of ethics whether the voter, having made up his mind whom he wants for president, should vote against any of the agents who are selected to record his vote, no matter who they may be. Yet the habit of "scratching" individual electors is more common than is generally supposed. Sometimes a popular elector of one party gets the complimentary votes of friends on the other side. More often personal spite is vented by leaving off a name or two, while rather a common method of "rebuking" a party which the voter feels bound to support with mental reservations, is to leave off the name of the first elector.

How many of the 79,690 voters who omitted some of their party's electors from their ballots did so from such reasons, and how many from accident, may be seen by a brief comparison. In the following tables are given the difference between the highest and lowest electors of each party in each state, and the percentage which that difference is of the total party vote.

[1] These figures are respectively .579 per cent of the total Republican vote of the same states, .493 of the Democratic, 2.627 of the Populist, 1.343 of the Prohibitionist and 1.384 of the Socialist.

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1. Names of electors so grouped on the ballot that one mark votes them all.

	REPUBLICAN		DEMOCRAT		PROHIBITION		POPULIST		SOCIALIST	
Massachusetts	68	.03	96	.06	15	.34	17	1.3	24	.17
Rhode Island.										
Minnesota	586	.27	1,249	2.26			70	3.33	268	2.29
Nebraska	703	.5	1,045	1.9	68	1.1	179	.09	65	.9
Pennsylvania	807	.09	296	.08	81	.2			22	.1
Maine[1]	20	.03	19	.07						
Vermont	40	.09	13	.13	4	.5			5	.58
North Dakota	73	.13	32	.22	4	.36	6	3.74	15	.72
Total	2,297		2,750		172		272		399	
Party vote	1,659,943		688,740		54,782		26,973		61,431	
Per cent.		.138		.399		.313		1.007		.649

2. Full list of party electors is printed on the ballot to be cast, and must be altered by scratching out, writing in or "stickers," in order to discriminate between electors.

	REPUBLICAN		DEMOCRAT		PROHIBITION		POPULIST		SOCIALIST	
Delaware	17	.07	18	.09	3	.5			3	2.1
Connecticut	80	.07	34	.04						
Georgia	1,387	5.74	41	.05	3	.43	264	1.17	1	.52
Missouri	426	.1	436	.1	66	.9	31	.7	159	1.2
Texas	2,019	3.94	423	.25	141	3.52	83	1.02	64	2.28
West Virginia	46	.03	55	.05	291	6.3	240	72.7	4	.2
New Jersey	52	.02	47	.02	13	.19	2	.069	9	.09
Total	4,027		1,054		517		620		240	
Party vote	910,601		909,528		25,699		40,360		31,845	
Average		.442		.115		2.011		1.534		.754

3. Names of electors in groups. Voter crosses off all except those he wishes to vote for.

	REPUBLICAN		DEMOCRAT		PROHIBITION		POPULIST		SOCIALIST	
Arkansas	322	.68	367	.57			23	.99		
Tennessee	699	.66	1,321	1.00	58	3.05	64	2.56	70	5.00
Virginia	12	.03	31	.04	1	.07			1	.5
Total	1,033		1,719		59		87		71	
Party vote	200,109		276,735		4,255		5,078		3,388	
Average		.516		.621		1.400		1.705		2.088

[1] Maine and Vermont chose only electors in the November, 1904, election; and as a mark in the straight ticket space voted all these at once, they are classified with the

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4. Square for voting all electors at once opposite candidates' names, but in the same column with individual elector squares, and of same appearance.

	Republican		Democrat		Prohibition		Populist		Socialist	
Maryland	3,803	3.6	2,172	1.9	213	71			102	4.6

5. Each individual elector must be marked in all cases.

	Republican		Democrat		Prohibition		Populist		Socialist	
Oregon	804	1.3	343	1.9	35	.9	42	5.5	204	2.7
Montana	1,127	3.2	438	2.00	13	3.3	60	4.	240	4.2
Florida	1,650	19.9	900	3.4			689	43.	1,096	47.6
Mississippi	267	8.34	134	.25			108	7.7	63	1.62
Total	3,898		1,815		48		899		603	
Party vote	106,890		119,716		4,141		5,303		16,025	
Per cent.		3.59		1.51		1.15		16.96		10.01

6. All voters of split tickets mark the electors individually.

	Republican		Democrat		Prohibition		Populist		Socialist	
Iowa	2,150	.69	415	.27	153	1.32	255	10.62	237	1.60
Louisiana	113	2.2	136	.2					15	1.5
Kansas	1,866	.87	649	.73	204	2.7	93	1.4	234	1.5
Indiana	6,060	1.6	3,957	1.4	763	3.2	116	4.8	272	2.3
Total	10,189		5,157		1,120		464		763	
Party vote	892,294		555,994		42,342		10,807		43,339	
Per cent.		1.14		.92		2.64		4.29		1.75

7. To mark all electors is one of the ways, but not the only way, of voting a split ticket.

states having a special circle for the group of electors. Massachusetts alone in this group provides no space for voting the electors individually. To "scratch" any one, a line must be drawn through his name, and the name of the preferred candidate written on the corresponding line in a blank "box."

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	REPUBLICAN		DEMOCRAT		PROHIBITION		POPULIST		SOCIALIST	
Alabama . . .	213	.94	96	.12	68	11.14	69	1.38	47	5.53
California . . .	1,447	.7	476	.5	51	.7			361	1.2
Idaho	452	.9	279	1.5	14	1.4	2	.6	81	1.6
Illinois	2,813	.4	2,187	.6	478	1.4	150	2.2	577	.8
Kentucky . . .	2,855	1.4	3,430	1.6	190	2.9	201	8.	153	4.2
Michigan . . .	3,556	.9	1,483	1.	139	1.	8	.6	136	1.5
New Hampshire.	4	.007	3	.009	2	.26	2	.25	27	2.45
New York . . .	365	.04	159	.03	37	.17	16	.21	40	.1
Ohio	3,014	.5	378	.1	214	1.1	14	1.	469	1.3
South Dakota. .	560	.7	157	.7	34	1.1	15	1.2	26	.8
Utah	238	.38	71	.21					18	.31
Washington .	1,091	1.07	160	.57	40	1.2	19	2.8	87	.87
Wisconsin . . .	1,474	.5	358	.3	49	.5	33	6.2	144	.5
Wyoming . . .	21	.10	58	.65	22	10.4			12	1.1
Colorado . . .	350	.25	206	.20	12	.35	111	13.5	34	.78
Total	18,453		9,501		1,350		640		2,238	
Party vote .	3,732,531		2,245,720		127,138		28,594		243,819	
Per cent. . . .		.494		.426		1.062		2.237		.917

The aggregate differences between highest and lowest votes for Socialist Labor electors was 484 or 1.507 per cent of their total in the entire United States.

So far as this slighting of individual electors is deliberate and intentional, it will be seen to follow the rules already observed in the vote for other offices. Thus we have, to begin with, two groups in which the easy and natural thing is to vote for all electors at once. Many more vote against unpopular electors in the states where this may be done by crossing off a name or two, than in those where it involves a more complicated process. Yet it cannot be doubted that mistake and not intention is responsible for all but a small part of the difference which commonly occurs between a party's highest and lowest elector. If it were intentional, the elector with the largest vote would be as likely to be found in one place as another on the ballot. As a matter of fact out of thirty-five states for which these data are at hand, the Republican elector having the largest vote was the first on the list in thirty and the second in one. The leading Democratic elector was the first on the list in twenty-two states and the second in five. The leading Prohibition elector was the first named in twenty-one states out of twenty-nine and the second in two, the leading Populist the first in fourteen states

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out of twenty-three and the second in five others, while the leading Socialist elector was the first named in twenty-eight out of thirty-three states and the second in two others. Similarly, the elector with the lowest vote was the one whose name came last or next to last twenty-four times in the Republican column, fourteen in the Democratic, eleven in the Populist and nineteen in the Socialist. Often the vote tapers down with the greatest regularity between. Either because they suppose that to mark a few names carries all, or because they do not count correctly, or because they tire before the end of the list, many thousands of voters have certainly stopped marking somewhere on the way. The length of the list of electors, of course, varies from three to thirty-nine, but this seems to have very little effect on the number who thus fail to reach the end of it.

If we assume that the figures in the first group represent the proportion of voters who will "normally" vote against electors of their party whom they do not like, then we find that, in the ballots most inviting error by their requirement of marking every name, twenty-four times as many Republicans, proportionately, failed to vote for the full list, four times as many Democrats and Prohibitionists, fifteen times as many Socialists and sixteen times as many Populists. Much of this difference is certainly due to downright blundering. We have additional proof here of the degree to which the form of ballot influences the vote. Thus the states which have ballots designed to encourage independent voting on offices in general, but to deter favoritism among electors of the same party, rank among the highest in the former comparison and among the lowest in this. In some instances, there is especial excuse for error. In Maryland the so-called "trick" ballot grouped the electors in a "box" with the names of the presidential candidates on the first line. A mark in the space opposite their names was counted for all eight electors. The most common mistake in 1904 was for a voter to mark after the name of elector number one, thinking that this would be counted for all. More Republicans proportionately did this than Democrats, with the result that not only was the vote of the state divided, but seven-

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eighths of it went to the party which really mustered the fewer voters. Interesting, too, are the Florida and Mississippi figures. In these states the names of electors were simply printed in a column, with no party designation, and in Florida even unseparated, so that there was nothing to show where one party's candidates ended and the next began. As the Democratic electors were named first in these states, it was comparatively easy to mark down to the proper point in voting that ticket. But an ignorant voter might well be puzzled by the instruction to mark say, from the eleventh to the fifteenth inclusive. Hence the extraordinary proportion of error. These ballots, which, as our original classification shows, belong to the same general division with the purest Australian types, serve the partisan purpose in these cases of bewildering the illiterate negroes.

A person of any intelligence, who knows how to read and has taken the trouble to find out the names of the candidates, ought seemingly to have no difficulty in casting his vote correctly even with the most confusing of these forms. But the foregoing figures show, if nothing else, the proclivity of the American voter to make mistakes where there is any possible excuse for his doing so. It is this which makes it impossible to say of any type of ballot, "This is the best, and every community should adopt it." We know that the straight ticket circle discourages independent voting, which is the same thing as saying that it improves the bad candidate's chances of being "pulled through" by the popularity of the good candidate of his party. But in letting the illiterate man vote, we assume that he is competent to decide at least which party he wants to put in power. The party circle with the picture over it may conceivably in some communities be the only system under which he can vote without blunders. A state which contains many such illiterates and is determined to let them vote must therefore decide, before fixing on any form of ballot, whether in view of its peculiar conditions haphazard voting or hidebound voting is the lesser evil.

Except in Maryland the differences between electors of the same party had no influence on the results in 1904. In fact, so far as this particular election is concerned, the foregoing

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table is hardly more than a political curiosity. Yet such differences might easily become a factor of great importance in a close election. The carelessness or caprice of voters has seven times in the last four elections resulted in dividing the electoral vote of a state. The highest Democratic elector came in ahead of the lowest Republican in Ohio and in California in 1892, and in California and Kentucky in 1896, while Oregon chose one Populist elector in 1892 and North Dakota one Republican, one Democrat and one Populist.[1] Should this condition occur again in an election as close as that of 1876, it would be the deciding factor. If in 1896, for instance, Mr. Bryan had carried the four states of Illinois, Indiana, Delaware and West Virginia he would have been elected president by one vote, simply because the Republicans of California and Kentucky had failed to support all their party's electoral candidates. The possibility that the presidency might be disposed of by such a miscarriage of the popular will is a serious objection to our present electoral system.

The secretary of state of an important state writes:

> The practice of printing the names of electors is a bad one. The constitution of the United States provides that the electors shall be appointed in such a manner as the legislature of each state shall determine. The voters should vote directly only for the candidates for president and vice-president, and the state returning board should give to each elector of the party as many votes as were received by the candidates for president and vice-president.

The suggestion is at least interesting.

As regards the general difficulties with electoral machinery, the remedy oftenest discussed is the use of the voting machine. The two conspicuous merits of this contrivance are that it disposes absolutely of delays and disputes in the counting of votes and, if properly constructed, renders it mechanically impossible to vote incorrectly. The careless voter, for instance, cannot

[1] In California in 1892 the plurality of the highest Republican elector over the highest Democrat was but .24 per cent of the Republican's vote. In Ohio that year, the corresponding difference was .26 per cent, in California in 1896 it was 1.31, and in Kentucky in that year .12.

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indicate two candidates for the same office. But after these great advantages are granted, the machine is, after all, nothing but a blanket ballot in which a lever, button or key takes the place of the cross-mark or other stamp. Except those involving "stickers" or the writing-in of names, any of the forms of ballot now in use in the United States may be embodied in a voting machine. The conclusions drawn from the figures here presented are therefore applicable just as much to the arrangement of the voting machine as to the arrangement of the paper ballot. If it is twenty times as much trouble to vote a split as a straight ticket, few persons are going to choose the former, whether the unit is a pencil mark or the movement of a celluloid button. The fear of making a mistake that will invalidate entirely is, it is true, removed, and this should give the voter a greater sense of freedom, but the argument of least resistance applies nevertheless. It is thus very important that a locality which proposes to install voting machines should secure a kind that will conform to the sort of ballot found to be adapted to the needs of that place. A state accustomed to a ballot which requires the marking of every name is simply undoing its good work if it installs voting machines which have a straight party lever or knob. It is virtually letting the designer of the machine nullify the provisions of the election law.

This is a period in which the importance of little things is being more and more recognized. Advertising experts have learned to estimate the psychological value of various typographical arrangements. Railroad companies have conducted expensive tests to determine what style of type in their timetables will be read with the minimum of mistakes and thus save their patrons from missing trains through misreading the starting time. At least as careful attention should be given to the make-up of that most potent of all sheets of paper, the ballot.

PHILIP LORING ALLEN.

NEW YORK CITY.

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LAND SYSTEM OF THE CONNECTICUT TOWNS.

WHEN the inhabitants of the three river towns of Hartford, Windsor and Wethersfield left Massachusetts for their new homes upon the banks of the Connecticut, they settled upon territory to which they had no title, except a squatter's right of possession. In the absence of any royal charter or grant from the New England Council, the colonists early turned their attention to strengthening their right of possession by purchasing the claims of the native proprietors. There is no evidence that the founders of Connecticut accepted the view of Roger Williams, that a valid title could only be obtained by purchase from the Indians, but they possessed themselves of the native title as the only one that could be obtained under the circumstances. Unquestionably the colonists were also prompted by a spirit of fairness towards the Indians in paying them for their land, for even after the granting of the royal charter in 1662, when the title of the colonists to their land no longer rested upon occupation and purchase, there was uniform action in extinguishing the Indian title by purchase and treaty.[1]

It was clearly recognized that much confusion would result from indiscriminate purchases of land from the natives by individuals. The Indians were none too careful about selling the same land several times to different purchasers, and many conflicting claims resulted.[2] To avoid such confusion of titles, the colonial authorities attempted to restrict the purchase of land from the Indians to those who had received the consent of the General Court.[3] These orders of the General Court, however, seem to have been "more honored in the breach than in the observance." It is true that there are instances where persons or groups of persons applied to the Court for authority to pur-

[1] Col. Rec., ii, 151, 254; iv, 305, 526.

[2] Larned, Hist. of Windham Co., i, 195, 150.

[3] Col. Rec., i, 402; ii, 151; iv, 305.

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chase land from the Indians,[1] but unauthorized purchases undoubtedly continued, and it must be confessed that the action of the General Court would incline one to believe that it did not consistently enforce its own orders.[2] By the end of the first quarter of the eighteenth century, practically all the Indian claims to the territory of the colony had been extinguished by purchase or treaty, some of them several times over.[3]

For more than twenty-five years, the colonists of Connecticut held their lands merely by *de facto* possession and native purchase.[4] In 1662, however, through the efforts of John Winthrop, the younger, a royal charter was obtained, confirming to the colonists not only the land which they occupied, but also annexing the formerly independent jurisdiction of New Haven. The charter granted the land to be held as "of the manor of East Greenwich" in free and common socage on the condition of the payment of one-fifth the gold and silver found in the colony.[5]

Prior to the formation of the Fundamental Orders, in 1639, the inhabitants of the three river towns appear to have acted upon their own initiative in making purchases of land from the natives. Neither the Massachusetts Commission nor the Court which displaced it seems to have controlled the granting of land. After 1639, however, all unoccupied land became public domain, and by the Fundamental Orders the right to dispose of such land was given to the General Court.[6]

The parceling out of the land of the colony was accomplished in two ways, first, by grants to individuals, and second, by

[1] MS. Rec. Towns and Lands, iv, 66, 68.

[2] After repeatedly forbidding unauthorized transfers of land from the natives, the General Court in 1706 ordered that if any person who had made such an illegal purchase should present an account of it to the Court no advantage would be taken of it. The following year this act was repealed. Col. Rec., v, 4, 30.

[3] Cothren, Hist. of Ancient Woodbury, p. 21.

[4] I pass by the somewhat mythical claim based upon the Warwick patent. For a discussion of this patent see Johnston, Connecticut, pp. 88 *et seq.*; Peters, Hist. of Conn., pp. 25 *et seq.*; Hoadley, Warwick Patent, Acorn Club Publications, No. 7.

[5] Poore's Charters and Constitutions, i, 252 *et seq.*; Cheyney, "The Manor of East Greenwich," *Am. Hist. Rev.* Oct., 1905.

[6] Col. Rec., i, 25.

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grants to groups of individuals. The individual grants, which were very common during the first fifty years of the colony's history, were in the nature of pensions, salaries, gratuities, or for the encouragement of some commercial enterprise.[1] These grants were often made by the General Court in the most indefinite way, allowing the grantee to choose the land wherever he pleased, so long as it did not prejudice any former grant.[2] As we approach the end of the seventeenth century, individual grants of land by the General Court become less common, but do not entirely cease.[3]

By far the most important manner of dividing the colony lands was by means of grants to groups of individuals with the object of forming new plantations. These grants were usually made in answer to petitions from actual or prospective settlers of a new plantation.[4] If the petition was approved by the Court, a committee was generally appointed to view the proposed plantation, to see if the location was suitable, to consider the number of inhabitants it would accommodate and to lay out the town plot and home lots.[5] The General Court might, and often did, direct more fully the formation of a new town. It was common for the Court to restrict the time in which the settlers should occupy and improve their grants.[6] The manner in which the land should be divided among the settlers was at times specified by the General Court. Thus it was ordered that each proprietor should have "equal and even shares" of the lands in Ridgefield.[7] In granting the plantation at Litchfield, the Court ordered that the township should be divided into sixty "rights," three of which were to be reserved for pious purposes.[8] In settling the town of Waterbury, the committee

[1] *Ibid.* i, 276, 323; ii, 200, 214; iii, 233.

[2] Thus we find 150 acres to be taken up "where it doe not damnify the Indians nor ye plantation," and again "where he can find it in Connecticut limits." Col. Rec., i, 340, 372.

[3] For grants subsequent to 1700 see MS. Rec. Towns and Lands, iii.

[4] Occasionally the General Court took direct action in settling a township without a petition. Col. Rec., v, 180; vi, 63.

[5] Col. Rec., ii, 210; v, 55, 160.

[6] *Ibid.* ii, 128. [7] *Ibid.* v, 121. [8] *Ibid.* vi, 127.

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of the General Court controlled the plantation for five years.[1] Add to the above activities of the Court the appointment of surveyors to fix the bounds of town grants, the settlement of disputes between towns as to their respective boundaries, and the occasional minute direction in special cases, and we have a substantially complete view of the land system, so far as the colony was concerned. In short, the land system of Connecticut was similar in all respects to that of the other corporate colonies of New England.[2] In these colonies there appeared no systematic attempt to obtain a revenue from the public domain. Land was granted freely to the settlers, and seldom leased or sold by the colony. Quit rents and alienation fines formed no part of the revenue of the corporate colonies. It is true that during the eighteenth century public land was not granted with such a free hand in Connecticut as had formerly been the case. It became common, in fact even the rule, for the colony to require some compensation for land grants,[3] but there is no evidence that the colony aimed to obtain a permanent revenue by leasing the public lands, nor do any officials distinctly charged with the administration of the public domain appear.

We come now to consider the manner in which the land granted to groups of individuals was distributed; how individual ownership displaced joint ownership. It is in this connection that the real importance of the land system appears. It is to be expected that the different localities in working out an agrarian policy would vary in some essential points and in many details. Such being the case, it is difficult to make a general statement as to the land policy which would apply equally to all the towns. There was, however, enough similarity of treatment to justify us in speaking of a land system. Furthermore, there was sufficient difference between the territorial policies of the towns formed during the seventeenth century and of those

[1] Anderson, Hist. of Waterbury, i, 150.

[2] Osgood, American Colonies, i, 425 *et seq.*

[3] The most noteworthy of the sales of public lands was that of the seven townships sold at public auction in 1737. Col. Rec., viii, 134, 170. See also Col. Rec., vi, 194; MS. Rec. Towns and Lands, ii, 273.

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formed during the eighteenth century to warrant us in treating them separately.

It has been noted that the settlement of a town was usually occasioned by a petition from prospective or actual settlers. These settlers formed a reasonably definite group, and we are met at the outset with the question: Were these petitioners granted the land as proprietors in fee simple, or were they acting merely as trustees for the town in its corporate capacity? During the first fifty years of the colony's history, the question did not appear to be of much importance. In most of the towns the grantees included all, or nearly all, the freemen of the town, and under these circumstances a town meeting would be at the same time a meeting of the proprietors. As a result it became customary in most of the towns during the seventeenth century to make allotments of land and provide for the regulation of the undivided land in the town meeting.[1] The attitude of the General Court, moreover, seemed to confirm the view that the towns should have the power to regulate their common lands. In 1639, in defining the power of towns, the General Court stated that the "Towns of Hartford, Windsor and Wethersfield, or any other Towns within this jurisdiction, shall each of them have power to dispose of their own lands undisposed of."[2] Again, in 1643, the General Court ordered that as the condition of the plantations required that much of the land should be improved in common, each town should, before the next meeting of the Court, choose seven "able and discreet men to take the common lands belonging to ech of the seurall townes, respectively, into their serious and sadde consideration."[3]

As we approach the end of the seventeenth century, however,

[1] Hartford Town Votes, pp. 39, 42, 46 *et passim;* Adams-Stiles, Hist. of Wethersfield, i, 95; Andrews, Three River Towns, Johns Hopkins University Studies, vii; Allen, Hist. of Enfield, *passim;* Steiner, Hist. of Guilford, 174; Colchester, Town Rec., *passim;* Caulkins, Hist. of Norwich, p. 95; Cothren, Hist. of Ancient Woodbury, p. 145.

[2] Col. Rec., i. 36.

[3] Col. Rec., i, 101. It is possible that this referred merely to the sequestered town commons, but it does not appear from the records that such was the meaning of the provision.

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the distinction between the original settlers and their descendants, and those who came in after the settlement of the towns, becomes more marked. Land had increased in value with the increase in population. The number of inhabitants who were not descendants of original settlers was constantly augmented. As a result we find developing in most of the towns three distinct classes of inhabitants: first, the original settlers or "proprietors," their heirs, assigns and successors; second, admitted inhabitants of the town, who were not proprietors; third, transients, who were neither proprietors nor admitted inhabitants.[1] The first two classes formed the active part of the population of the town. The proprietors were, relatively, a fixed group, while the admitted inhabitants were constantly increasing. In the natural course of events, the latter would soon come to hold the balance of power in the town meeting, and as the administration of the land had become a function of the town meeting, they would control the distribution of the undivided land.

The proprietors, in order not to lose control of the land, set up the claim that the grant of the township by the General Court was made to the original settlers, their heirs, assigns and successors in fee simple, and not to the town in its corporate capacity; and that the proprietors should have the exclusive right to grant the undivided land in the town. In some of the towns where the proprietors were still in the majority, no effective opposition was made to their claims,[2] but in towns where the non-commoners equalled or outnumbered the proprietors, the pretensions of the latter were not quietly acquiesced in. In Simsbury, as early as 1672, a controversy arose as to whether the "outlands" belonged to the original proprietors, or to the inhabitants of the town generally. At a town meeting held in April, 1672, it was voted to divide a portion of these lands

[1] Dr. Stiles in his recent thorough study of Wethersfield makes a four-fold division: (1) proprietors, (2) freemen of the commonwealth, (3) admitted inhabitants of the town not freemen of the commonwealth, (4) householders. This classification does not include the transient resident, who, though he received scant courtesy from the town, was still a portion of the population. Adams-Stiles, Hist. of Wethersfield, i, 41.

[2] In Windsor undivided land was granted exclusively by the proprietors. Andrews, Three River Towns.

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among the inhabitants of the town; similar divisions were also voted in 1680 and 1688, against all of which the proprietors protested ineffectually. The question again arose in 1719, when a committee appointed for the purpose reported, and the town voted, that

> the right of disposal of common or undivided land, is and shall be in all such and them only who can derive their right so to do, either from an act of the General Assembly, and their heirs and assigns, or those who have been admitted inhabitants, and their heirs and assigns, or shall hereafter be admitted inhabitants with that power and right expressly inserted in the town's vote of admission.[1]

To this action of the town the proprietors took exception. The town, however, continued to grant the undivided land until the action of the General Court sustained the contention of the proprietors, after which the remaining common lands were managed and conveyed exclusively by the proprietors. Similar controversies occurred in New London, Canterbury, Ashford and other towns.[2]

It was in connection with the struggle in New London, that the question was brought before the General Court in 1719 for final settlement by petitions from both the town and the proprietors.[3] The attitude of the General Court had been at first, as we have seen, that the towns were empowered to regulate and dispose of the common lands. The first indication of a change of view on the part of the Court was in 1685, when patents were first issued to the various towns.[4] In these patents it was stated that the land in the towns was granted "to the said proprietors inhabitants, their heirs and assigns."[5] In confirm-

[1] Phelps, Hist. of Simsbury, p. 80.

[2] Caulkins, Hist. of New London, p. 263; Larned, Hist. of Windham Co., i, 156; *ibid.* i, 214 *et seq.*

[3] MS. Rec. Towns and Lands, iii, 174–184. Gov. Saltonstall strongly supported the proprietors of whom he was one. See his protest against the action of the town in dividing the common lands. MS. Rec. Towns and Lands, iii, 239.

[4] Probably the reason for the issuance of the patents was to guarantee the titles to land that had been granted, before the colony's charter was vacated by *quo warranto* proceedings which were then pending.

[5] Col. Rec., iii, 177.

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ing the patents of several towns in 1703, the following even stronger expression was used:

> all and every the several above mentioned lands with all rights and immunities contained in the above mentioned patent, shall be and remain a full and clear estate of inheritance in fee simple to the several proprietors of the respective towns.[1]

The next expression of the General Court upon this important question, was in answer to the New London petitions. When the petition of the town was first presented long debates ensued, the Upper House favoring the proprietors and the Lower House favoring the town.[2] The Court finally ordered that, it "being a matter of so great weight and general concern as to effect the generality of the towns," consideration of the question should be postponed until the next session of the Court.[3] At the following session it was resolved that the patent to the town did

> confirm the lands in said township to each and every proprietor in such towns, and to such as have any distinct propriety there though not living in such towns . . . also all lands not divided or disposed to hold as tenants in common; all of which undivided lands were confirmed to them, the said proprietors, their heirs and assigns, so that no person by becoming an inhabitant afterwards could have any right to dispose of any land in said town by voting in a town meeting.[4]

But the General Court ordered that all titles to land which had been previously obtained by town votes were to be valid.

The proprietors having carried their point, in many of the towns they took steps to organize themselves in a more permanent manner. Proprietors' meetings were held distinct from the town meetings, and the regulation and disposal of the undivided land was thenceforth controlled exclusively by the proprietors. The corporate character of the proprietors was recognized by the General Court in a number of acts. The

[1] Col. Rec., iv, 443.
[2] MS. Rec. Towns and Lands, iii, 174 *et seq.*
[3] Col. Rec. vi, 131. [4] *Ibid.* vi, 189.

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proprietors were required to hold a meeting upon the application of at least five of their number; they were empowered to levy taxes upon themselves, and to choose a clerk duly sworn to record their proceedings.[1] At a proprietors' meeting a moderator and clerk, and usually a treasurer, were chosen. Much of the business of the proprietors was transacted by means of committees. Thus committees were appointed to provide for the division of the common lands, to look after the common fence, to search out and prosecute trespassers, to survey grants and lay out highways, *etc.*[2] Attorneys were also appointed by the proprietors to prosecute and defend all actions brought in the name of the proprietors.

While the proprietors in any given town were, in theory, the heirs, assigns and successors of the original settlers, and hence tended to become a close corporation, in many of the older towns the theory did not agree with the facts. Through lack of records in some towns it was impossible to discover who were the original settlers, and in such cases the taxable inhabitants at a given time were reckoned as proprietors.[3] Furthermore, the proprietors not infrequently added to their numbers. Thus in 1713, the proprietors of Colchester voted to add some twenty-four persons to the list of proprietors.[4] In Waterbury we find a distinction made between the original proprietors called "Grand Proprietors" and those later admitted called "Bachelor Proprietors." The latter shared in the division of common lands, but had no voice in granting land.[5]

We have thus far examined the administration of the land system, as it developed in the towns of the seventeenth century. The attempt has been made to show that, while at first the

[1] Col. Rec., vi, 25, 379, 424.

[2] See Proprietors Rec. of New Hartford, Norfolk, Canaan, Guilford and othe towns.

[3] In Guilford the body of the proprietors was fixed by town vote in 1697, and included all those that were settled planters in 1686. Steiner, Hist. of Guilford, p. 174. In New London such persons as were land holders in 1703 when the town patent was granted were considered proprietors. Caulkins, Hist. of New London, p. 263.

[4] Colchester, Prop. Rec., April 28, 1713.

[5] Anderson, Hist. of Waterbury, i, 280; Bronson, Hist. of Waterbury, p. 116.

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towns in their corporate capacity regulated the territorial policy, by the end of the century the proprietary system had become general. In many of the older towns, however, the greater part of the common land had been distributed before the proprietors obtained exclusive control, and hence their activity was considerably restricted. It is when we reach the towns formed during the eighteenth century that we find the system of proprietary holdings most fully developed. We come now to consider these towns.

The territory from which the greater number of the towns of the eighteenth century were formed was the so-called "Western Lands," covering approximately the present county of Litchfield. All of this vast territory, comprising over 300,000 acres, had been granted by the General Court to the towns of Hartford and Windsor, in 1675.[1] This grant was made in anticipation of the loss of the charter, and in order to prevent the lands from falling into the hands of Andros. Not much attention was paid to the territory until after the opening of the eighteenth century. The land was rugged, and other more desirable territory was available for settlement.

The first attempt made by the Hartford and Windsor patentees to improve their grant was in the settlement of the town of Litchfield in 1719. The General Court, while granting the privilege of settling this town, practically rescinded, at the same time, the former extensive grant to the two towns.[2] The inhabitants of Hartford and Windsor resisted[3] this act of the General Court, and the title to the lands was in dispute until 1726, when a compromise was reached by dividing the territory between the two towns and the colony.[4] The territory reserved to the colony embraced the present towns of Canaan, Norfolk, Goshen (including Warren) and about two-thirds of Kent, while Hartford and Windsor received the present towns of Colebrook, Hartland, Winchester, Barkhamsted, Torrington, New Hartford

[1] Col. Rec., iii, 225. [2] *Ibid.* vi, 127.

[3] Trumbull gives an account of a riot at Hartford caused by the dispute over the title to this territory. This story, however, has been discredited. Trumbull, ii, 96; Boyd, Annals of Winchester, p. 11.

[4] *Ibid.* vii, 44, 337.

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and Harwinton. These towns may be taken as typical of nearly all the towns formed during the eighteenth century, and an examination of the system of land administration in these towns will suffice as showing the chief characteristics of all towns formed during this period.

In 1732 the towns of Hartford and Windsor made a division of their portion of the Western Lands, by which the townships of Hartland, Winchester and New Hartford, and the eastern half of Harwinton went to Hartford, and the townships of Colebrook, Barkhamsted, Torrington and the western half of Harwinton fell to Windsor. In the same year the General Court authorized the inhabitants of Windsor, and the following year the inhabitants of Hartford, to meet and make partition of their land to individual proprietors.[1] The taxable inhabitants of the two towns were then divided into seven "companies," each owning a township. The share of any individual in a company depended upon the amount of his ratable estate in Hartford or Windsor.

The manner in which the part of Western Lands reserved to the colony was disposed of, and proprietorships created, is of interest, as characteristic of the way in which practically all the remaining public domain was parceled out. In 1737 the General Court ordered that the five townships on the east of the Housatonic River, and the two on the west,[2] should be sold at public auction in certain specified towns of the colony.[3] Six of the seven townships were divided into fifty-three "rights" or shares.[4] Three of the rights in each township were reserved, one for the use of the ministry, one as a gratuity to the first minister, and one for the support of the town school. The remaining fifty rights were sold to the highest bidders. The

[1] Col. Rec., vii, 387, 445.

[2] The five townships on the east side of the river were Norfolk, Canaan, Goshen, Cornwall and Kent; the two on the west, Sharon and Salisbury.

[3] Norfolk at Hartford, Goshen at New Haven, Canaan at New London, Cornwall at Fairfield, Kent at Windham, Salisbury at Hartford, Sharon at New Haven. All the townships seem to have found purchasers except Norfolk, which was not finally sold until nearly twenty years later. Col. Rec., viii, 135; x, 320.

[4] Salisbury was divided into twenty-five rights.

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Court, however, fixed certain minimum prices for each right, ranging from 30 to 60 pounds. Certain restrictions were placed upon prospective purchasers. They were required to be inhabitants of the colony, to settle themselves or their agent and live three years in the town in which they purchased land, to build a house of certain specified dimensions, and clear and fence at least six acres of land.[1] The method thus employed of distributing the public land might be termed the "eighteenth century plan," and from it developed certain characteristics which were markedly different from those of the land system in the older towns.

Perhaps the most striking distinction in this respect between the older and later towns, was the appearance in the latter of absentee proprietors, and the land speculation incident to such proprietorship. In the older towns the proprietors were, to a large extent, actual settlers, and their land holdings were confined largely to the town in which they lived. In the towns formed during the eighteenth century, however, the proprietors bought land in a township having no intention of settling there. The land was purchased merely upon speculation, and it was common to find a large part of the land in a township change hands before any settlement had been made.[2] Proprietors' meetings were held where a majority of the proprietors lived,[3] and this was often not in the town of which they were proprie-

[1] Col. Rec., viii, 134 *et seq.*

[2] Not one of the 106 original proprietors of Winchester ever dwelt in the town, and only one son of a proprietor ever had a permanent residence there. Boyd, Annals of Winchester, p. 31. Of the twelve proprietors of Union only one was an actual settler. Lawson, Hist. of Union, p. 39. Of the 41 original proprietors of Sharon about one-half became residents. Sedgwick, Hist. of Sharon, p. 24. In 1761 the proprietors certified that of the 25,000 acres of land in Cornwall from eleven to twelve thousand acres were owned by non-residents. MS. Rec. Towns and Lands, viii, 278. See also Orcutt, Hist. of New Milford, 70; Atwater, Hist. of Kent, p. 17; MS. Proprietors Rec. of New Hartford, pp. 11 *et seq.*

[3] The meetings of the proprietors of New Hartford were held at Hartford from 1732 to 1738. The first meetings of the Goshen proprietors were held at Litchfield, of the Cornwall proprietors at Hartford, of Norfolk proprietors at Simsbury, of the Canaan proprietors at Wethersfield, and of the Kent proprietors at Windman. MS. Prop. Rec. of New Hartford, Norfolk and Canaan. Hibbard, Hist. of Goshen, p. 30; Gold, Hist. of Cornwall, p. 20; Atwater, Hist. of Kent, p. 22.

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tors. An outcome of the tendency to land speculation was the delay which resulted in the settlement of some of the towns. Land being held largely for a speculative increase in value and not for actual settlement, long periods of time elapsed between the sale of a township and its actual settlement.[1]

The distinction between the proprietors' meetings and the town meetings, and between their spheres of activity, was much more clearly marked in the towns of the eighteenth century, than was the case in the older towns. Seldom or never do we find the town meetings in the later towns interfering in the regulation or distribution of the common land. The exclusive right of the proprietors to deal with these questions was generally conceded from the outset. Disputes between the towns and the proprietors did arise, but these were usually concerning the right of the town to tax the proprietary lands.[2]

The proprietors as a body, in the later as in the older towns, continued their activity as long as there remained common or undivided land. At first their meetings were frequent, but as the successive divisions of common land constantly diminished their holdings in severalty, their activity decreased and meetings were held less and less frequently.[3]

Thus far in the treatment of the land system, emphasis has been laid merely upon the question of administration. The attempt has been made to show that the activity of the colonial authorities in administering the land system was little more than supervisory, while the real direction and administration of the land was left to the localities; and, furthermore, that in the

[1] Winchester, one of Hartford's towns in the Western Lands, was not settled or divided until twenty-nine years after the division of the Western Lands. Boyd, Annals of Winchester, 31. It was nine years after the sale of Union before any attempt was made to divide the land among the proprietors. Lawson, Hist. of Union, 38.

[2] MS. Rec. Towns and Lands, iii, 136, 195; MS. Prop. Rec. of New Hartford, August 6, 1744; Lawson, Hist. of Union, p. 50.

[3] Meetings of the proprietors of Norfolk were held regularly twice, or oftener, a year until 1768, then no meeting is recorded until 1804, and then at intervals of ten years or more until 1856. Meetings of the Canaan proprietors were held at intervals of two or three months until 1765, then irregularly until 1804. MS. Prop. Rec. of Norfolk and Canaan. See also Caulkins, Hist. of New London, p. 263; Allen, Hist. of Enfield, i, 92; Steiner, Hist. of Guilford, p. 175.

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towns the system of proprietary administration had displaced the town administration of land by the end of the seventeenth century. The system of proprietary control which became general during the eighteenth century was in all essential points analogous to the administration of the land system in the proprietary provinces.[1] The proprietors in the Connecticut towns were a reproduction on a smaller scale of the proprietors of Maryland and Pennsylvania. While the elaborate administrative machinery of the latter did not appear in any of the Connecticut towns, still the aims of the proprietors in each case were identical, namely, to obtain a revenue from their lands.

We come now to consider the manner in which the land of a township was distributed among the individual proprietors. Here again a distinction will be made between the earlier and later towns.

The character of the land in any township varied according to its location and topography. In most of the older towns which were situated on or near rivers or streams, the land might be classified roughly under the following heads: (1) Meadow or marshy land; (2) cleared upland; (3) uncleared or wooded land. Upon the cleared upland was usually located the town plot, home lots and planting grounds. The meadow furnished hay and pasturage, while in the wooded land were pastured the swine, sheep and young cattle.[2]

The first step in the settlement of a town was the laying out of the town plot and the assignment of home lots. This, as we have seen, was often done by a committee of the General Court.[3] The home lots varied greatly in size in the different towns, and often within the same town. In Guilford they ranged from 1 to 10 acres; in Wallingford and Enfield they were uniformly 10 or 12 acres; in Litchfield 15 acres, while in Woodbury the inhabitants were divided into six "ranks," the home lots of the different ranks being 25, 20, 18, 16, 12 and 10 acres.[4] Generally

[1] Osgood, American Colonies, ii, 16 *et seq.*

[2] *Ibid.* i, 437.

[3] Col. Rec., ii, 210; v, 55, 160.

[4] Steiner, Hist. of Guilford, p. 49; Davis, Hist. of Wallingford, p. 81; Woodruff, Hist. of Litchfield, p. 18; Allen, Hist. of Enfield, i, *passim*; Cothren, Hist. of Ancient Woodbury, p. 39.

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the location of a person's home lot was determined by chance, but not infrequently the minister or other prominent settler would be allowed first choice.[1] After the home lots had been granted, the upland and meadow was subject to grant. Here again the division was usually made by lot. The circumstances which determined the size of a person's home lot, as well as his share of meadow and upland, varied in different towns. Occasionally, though not often, a rigid equality was observed in the assignment of home lots and other land.[2] Generally, in the earlier divisions, an attempt was made to proportion a person's share to his investment, or his activity in forming the plantation, or his ability to advance the interests of the community. As time passed, the amount of a person's taxable estate became the common index for determining his share in the undivided lands.[3] In Wallingford the whole population was divided into three "ranks." The persons in the first "rank" paid double the amount of taxes of those in the lowest "rank," and one-third more than those of the middle "rank." Land was then divided among the ranks in the proportion of 4, 6, and 8.[4] In Guilford, in the fourth division of land, the rule was that there should be given one acre of land for every pound in the list, 18 acres for each male child, and 10 acres for each woman or female child.[5]

There appeared in some of the towns a desire to prevent too large an accumulation of lands in the hands of a few persons. In the "Articles of Association and Agreement," entered into by the planters of Waterbury, it was provided that no person should subscribe to more than 100 pounds' allotment.[6] In Guilford it was provided that no one should put in his estate above 500 pounds to "require accommodation in any division of lands."[7]

Seldom, or never, was all the undivided land of a town

[1] Caulkins, Hist. of New London, p. 59.

[2] Col. Rec., v, 55, 121; Andrews, Three River Towns, Johns Hopkins University Studies, vii.

[3] Norwalk Town Records, December 12, 1687; Andrews, Three River Towns, Johns Hopkins University Studies, vii; Larned, Hist. of Windham Co., i, 37.

[4] Davis, Hist. of Wallingford, p. 81.

[5] Steiner, Hist. of Guilford, p. 173.

[6] Bronson, Hist. of Waterbury, p. 8.

[7] Steiner, Hist. of Guilford, p. 49.

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granted in one division; successive divisions were made as occasion demanded. As a result it was common to find a person's estate distributed about the town in a number of small tracts.[1]

Besides the regular division of land in which all, or a majority, of the inhabitants shared, a large number of individual grants appear in the records of the different towns. These grants were made sometimes to accommodate new settlers, at others to equalize a person's share in a regular division because of deficiency in the quality of the land, and again to poor settlers who did not share in the general distribution.[2]

A result of the manner of dividing land which has just been described was that a considerable portion of the land would remain for a greater or less period of time undivided. The fencing and regulation of this common land was an important function of the town or proprietors' meetings. Furthermore, it was customary, when a given portion of common land had been divided among the proprietors, to allow the land to remain in one common field. Each owner improved his own part of the common field in his own way, and after the crops had been removed, it was the custom to depasture the field, allowing each owner to turn in a number of cattle proportioned to his acreage of land in the field.[3] Of the common fence each proprietor was required to build and keep in repair an amount proportioned to the amount of his holding in the field. The fences were viewed at regular intervals by fence viewers, and fines were imposed on those proprietors who failed to keep their portion in repair.[4] Besides the proprietary fields which lay in common, there were the town "commons." The latter were certain

[1] One Isaac Gleason possessed some twelve separate portions of land in different parts of the township of Enfield. Allen, Hist. of Enfield, i, 137 *et seq.*; Compare Osgood, American Colonies, i, 449.

[2] Hartford Town Votes, pp. 197, 212, 238; Derby Rec., pp. 28, 29, 78 *et seq.*; Allen, Hist. of Enfield, i, 283.

[3] Adams-Stiles, Hist. of Wethersfield, i, 113; Eggleston, Land System of the New England Colonies, Johns Hopkins University Studies, iv, 594.

[4] Steiner, Hist. of Guilford, p. 246. See a good description of common fields and fences in Bronson, Hist. of Waterbury, pp. 47 *et seq.*

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amounts of land sequestered by vote of the town or proprietors for the use of the town generally. These commons furnished pasturage, firewood, timber, stone, *etc.*, to the inhabitants of the town without any reference to their proprietary ownership. These commons were maintained in some towns for many years, but finally were divided as the other proprietary lands.[1] The maintenance of common herds and herdsmen was a characteristic accompaniment of the system of common fields. The cattle and sheep of a town were placed in one or more herds under the charge of regularly chosen town herdsmen and shepherds.[2]

An interesting feature of the land system of the older towns was the restrictions which were placed upon the right of an individual to alienate his land. As the entire right of commoners both in the divided and undivided lands might be sold or transferred, it was deemed necessary in order to prevent undesirable persons from becoming land holders and possible inhabitants of the town, to restrict the right of a person to dispose of his land at will. In 1659 the General Court provided that no person should sell his land until he had first offered it to the town in which the land lay and the town had refused to purchase it.[3] To this general enactment the towns added other restrictions. From the first, Hartford had required the consent of the town to the sale of lands.[4] In Enfield a person was required to oc-

[1] Adams-Stiles, Hist. of Wethersfield, i, 113 *et seq.*; Bronson, Hist. of Waterbury, pp. 79 *et seq.* An interesting controversy occurred over the division of the town commons in Hartford in 1754. The descendants and successors of the "Ancient Proprietors" claimed the right to divide the commons among themselves, and proceeded to lay out a division. The "Inhabitants Proprietors," or tax-paying inhabitants, disputed this division and proceeded to lay out the commons to the taxable inhabitants. This soon produced a number of suits in the courts to determine the title. After various decisions, generally in favor of the Ancient Proprietors, a compromise was reached by which the town purchased the rights of the Ancient Proprietors. The land was then distributed, probably, among the taxable inhabitants. MS. Documents in the library of the Conn. Hist. Soc.

[2] In New London the cattle were placed in two herds each with a keeper. Caulkins, Hist. of New London, p. 82. See also Allen, Hist. of Enfield, i, 328; Steiner, Hist. of Guilford, p. 240.

[3] Col. Rec., i, 351.

[4] Hartford, Town Votes, February 21, 1636.

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cupy his grant of land seven years, and also obtain the consent of the town before he could sell it.[1]

During the eighteenth century when it became usual for the General Court to sell townships instead of freely granting them, a different system of division prevailed. These townships, as we have seen, were usually divided into a certain number of "rights," each right entitling the purchaser to an equal share in the land of the township. Thus the basis for the division of land was exclusively investment, not ability or taxable estate, as had been common in the older towns. Naturally this resulted in much greater uniformity in the size of home lots and other holdings. The successive divisions of land followed each other with greater rapidity in the later than in the older towns.[2] The frequent transfer of land holdings was a feature of the land system in the towns of the eighteenth century. Often, an entirely new set of proprietors would participate in the third and later divisions of common lands. Common fields, fences, and herds were much less a feature of the town economy of the later than of the earlier towns. This was due in part to the fact that the colonists had emerged from the primitive conditions of land cultivation, but more largely to the fact that in many of the later towns the proprietors, being non-residents or speculators, did not improve their holdings.

[1] Allen, Hist. of Enfield, i, 62. See similar provisions. Caulkins, Hist. of Norwich, p. 102; Davis, Hist. of Wallingford, p. 80; Cothren, Hist. of Ancient Woodbury, p. 40.

[2] There were twelve divisions in Canaan, eight of them in the first seven years after the settlement of the town. In Norfolk there were eight divisions, in New Hartford five, in Kent ten and New Milford fourteen, most of them at short intervals. MS. Prop. Rec. of Canaan, Norfolk and New Hartford; Atwater, Hist. of Kent, p. 17; Orcutt, Hist. of New Milford, p. 13.

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MUNICIPAL HOME RULE[1]

ANY discussion of the subject of municipal home rule naturally divides itself into three somewhat distinct parts. In the first place, we must determine what we mean by the word municipal; *i. e.*, we must ascertain what functions discharged within a city have a distinctly local and municipal interest. In the second place, we must endeavor to determine what we mean by the term home rule. And finally, assuming that the establishment of home rule is advantageous, we must find out in what way we can secure the desired end.

First, then, what are the functions which are of distinctly local and municipal interest? We may by no means assume that all of the governmental functions which are discharged within the limits of a municipality are of exclusively local concern. Thus, there is in every municipality a post-office. Such a post-office, however, forms a portion of a greater system which extends throughout the entire country, and the functions which are discharged within such a post-office are merely a part of the work done by an administrative organization whose activity outruns the limits of any particular section. Thus, again, in many cities we find a custom house at which vessels and goods coming from foreign countries are entered and the duties by law imposed on such imported goods are paid. Like the post-office, however, the custom house forms a part of an administrative organization which extends over all the territory of the United States. It is unnecessary to attempt an enumeration of all the functions of government, discharged within a given municipality, which are of this character. The illustrations given suffice to show that there is a class of functions discharged in every city which are of general interest, and in the discharge of which, under modern conditions, the city authorities as such have little if anything to do.

[1] Address delivered before the Civic Conference at Portland, Oregon, August 18, 1905.

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At the same time it is well to remember that many of the functions which are now regarded as distinctly belonging in the sphere of general government were at one time discharged by the cities and, in the conditions of the time, were regarded as of peculiar, if not exclusive, interest to the city which attended to them. Thus, for example, during the fourteenth and fifteenth centuries European cities very commonly maintained military forces which had no connection with the forces of the several countries in which the cities were geographically located. Further, it was necessary for the city to pursue such a policy if it paid proper attention to the interests of its own inhabitants, because the very existence of the city and the commercial and industrial welfare of its people, for the maintenance of which the city government had been established, were almost entirely dependent upon its power to resist the attacks of its enemies. Thus, again, the collection of the customs, which at the present time is under the control of our central government, was in certain of the North American colonies numbered among the duties of the town officers.

There is another class of functions discharged within the limits of the city, in regard to which the city authorities are called upon to act but which, nevertheless, are not purely municipal. These functions are discharged by the city authorities rather as agents of the general government of the state than as representatives of purely local interests. Thus, for example, it is very commonly the case that officers, elected directly or indirectly by the people of the city, discharge functions connected with the administration of justice. The determinations which these officers make in the decision of cases brought before them are, however, in many cases, appealable to higher judicial bodies which are regarded as representing the state as a whole rather than the city. In other words, municipal judicial authorities form a part of the general judicial system of the state.

Here, as in the case of those functions which have been referred to as of distinctly state interest, the cities in former times occupied a much more independent position than they do at present. In earlier days there was practically no general state judicial system, just as there was no general state law; or if

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there was a general judicial system or a general state law, the cities were excluded from that system and from the operation of that law; and the judicial authorities which a city established and maintained acted independently of state control, elaborating a law which was binding upon its citizens alone, and which was the only law binding upon them as to transactions which took place within the city.

As a result of the struggle between the cities and the states within which they were situated, which was particularly characteristic of the seventeenth and eighteenth centuries of European history, the cities were reduced to a position of complete subordination to the governments of the states within which they were situated. One of the causes which produced this result is of course to be found in the consolidation and extension of the royal power. Another cause, however, is to be found in the fact that economic conditions were everywhere so changed, during the centuries immediately preceding the nineteenth, that there was no particular advantage to be derived by the city from the maintenance of the exclusive position which it had attained prior to that time. Thus, for example, one of the reasons for the development of the legal exclusiveness to which allusion has been made, is to be found in the fact that the existence of commercial and industrial life, which was characteristic of all cities then as it is now, made necessary the development of a law which was quite different from the law developed in the open country, where economic conditions were mainly of an agricultural character. As a result of the increased importance of industrial and commercial life, the law developed in cities became in many instances the common law of the state in which the city was situated. The judicial procedure which was adopted in the cities replaced the procedure by means of oaths and ordeals which had been developed for the settlement of controversies in the open country and which was perpetuated in the feudal courts; and the law merchant became a part of the general law. When this development was completed the cities were no longer obliged to insist upon the continued and permanent exclusion of the city territory from the operation of the general law.

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The result, then, of the historical development of Europe, particularly in the seventeenth and eighteenth centuries, was to take from the cities the right to discharge the functions of government whose discharge had seemed to them in the past to be of the greatest importance; and all the power that the cities retained, after the centralization of authority in the state government, was the right, with the consent of the state government, to act as its agents in the exercise of powers which the state might, with due regard to the maintenance of its own integrity, delegate to city authorities.

At the present time, however, there are other functions discharged within the limits of a city which have little if any interest for the state as a whole. Thus, intra-urban transportation is a business whose influence is felt only within the limits of the city. Thus, again, the drainage of a city may be so attended to as to affect in hardly a perceptible degree those portions of the state lying outside of the city limits. Thus, again, the proper housing of the city people, which in congested centers of population often demands attention, is a matter which has little if any interest for the people of the state not resident in the city. During the course of the nineteenth century these and kindred matters became of increasing importance because of the great increase in urban populations and because of the origination and development of scientific methods of treating them.

While it would not be absolutely correct to say that prior to the opening of the nineteenth century these matters had received no attention at all, we should certainly be within the bounds of truth were we to say that such treatment as they did receive was absolutely inadequate and was accompanied by few if any beneficial results. It is really because of the increased importance of these subjects, due to the causes which have been mentioned, that a municipal problem has again arisen. The municipal problem prior to the opening of the nineteenth century had been practically settled in favor of the state. After a long period of struggle, it had been decided almost everywhere throughout the western European world that it was inexpedient that there should be anything like municipal home rule. Practically all the functions which cities had claimed

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the right to discharge had been assumed by the state, or, if still discharged by the cities, were discharged by them as the agents of the state government and subject to state control. But with the development both in number and importance of these functions of government which have been spoken of as distinctly municipal, a new municipal problem has arisen. The question now is: Shall these new functions of government, which are mainly if not exclusively of local interest, be attended to by the municipal authorities, or shall they be attended to by the authorities of the state government, according to the same rules and under the same conditions as those functions which, though formerly municipal, are now regarded as of state concern?

The differentiation of governmental functions which I have attempted to make appears to be necessary if we are to obtain a clear idea as to the proper content of municipal home rule. For if we regard municipal home rule as applicable to all functions of government discharged within the city limits, we are acting without discrimination. We are in reality attempting to turn back the hands of the clock of time and to apply principles to conditions to which they are not in any way applicable.

It may therefore be said that, conceding that municipal home rule is in any case desirable, it is not desirable that its principles should be applied rigidly to all functions of government discharged within the cities, but that, if we are to judge from the verdict of history, its principles are applicable only to those functions of government which, as a result of the development of the nineteenth century, are to be regarded as distinctly local and municipal in character.

We may go a step further. We may say that even as to certain of the functions of government, which at the present time may appear to be of exclusively local and municipal interest, the principles of home rule may cease to be applicable on account of a change in the social and economic conditions of the country. Thus, for example, during most of the nineteenth century the problem of municipal water supply was regarded as a problem whose solution affected only the city which was to be supplied with water. On account, however, of the great increase in the size and number of urban communities in some of the

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states of this country, the problem of municipal water supply has ceased to be a problem whose solution affects merely the cities to be supplied with water, and has become a problem whose solution affects as well those portions of the state from which the water supply is to be derived. At the present time, in the eastern portion of the state of Massachusetts, the competition between the various urban communities for the sources of water supply has been so keen that the state has been obliged, in the interest not only of the urban communities concerned but also of the rural districts from which the water supply is to be taken, to step in and regulate this matter itself. This it has done through the formation of a metropolitan water commission, as it is called, whose members are appointed by the state and whose expenses are paid by the issue of state bonds. Similar conditions are appearing in connection with the proposed increase in the watter supply of the city of New York.

On account of the fact that functions which appear now to be municipal may in the future become of interest to the state as a whole, it is absolutely necessary that the state, in whose limits the cities are to be found, shall reserve to itself the power of taking into its own administration, or subjecting to its control, any function of city government whose influence has, on account of the change in social conditions, come to transcend the limits of a particular city.

What functions discharged in any given city shall be regarded as municipal in character is a question whose answer is dependent upon the geographical and social conditions of such city and of the state in which it is situated. Thus, the sewerage problem of a city like New York, which is situated on tidal waters, may be a purely municipal problem, while the sewerage problem of a city like Chicago, which discharges its sewage into interstate waters, is a problem which transcends not only the limits of the city but those of the state in which the city is located. But, notwithstanding these considerations, there are unquestionably discharged in every city functions which are of concern to that city alone and to which the principles of municipal home rule may with propriety be applied.

What, now, do we mean by the term home rule? In a gen-

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eral way it may be said that this term has had two meanings. One of these meanings has been characteristic of the institutions of England and the United States. The other has been characteristic of the institutions of continental Europe.

In accordance with Anglo-American ideas, local self-government, which of course is another term for home rule, has consisted in the privilege of given localities to choose the officers who were to discharge governmental functions within their limits. Local self-government, according to Anglo-American ideas, has not, or has only very recently, involved the additional power of determining the policy to be adopted by the specific localities affected. Local self-government of the Anglo-American type has been developed in connection with the extreme centralization in all matters of legislation which has been characteristic of English public law and still obtains in the countries whose public law is based on that of England. So far as the local bodies were concerned, the principle found its expression in the rule of law which requires a local authority to show some legislative authorization in order to justify the exercise of a power of government. The application of this rule has had for its result that the city in the United States has been unable to determine for itself the sphere of its activity even as to those matters which concerned it exclusively. Thus, under the Anglo-American system, the city has not been able to regulate its system of public lighting unless it has been authorized so to do by the legislature, and in many instances the legislature has not given it the necessary power even where the city has made application to the legislature for such power.

The enormous amount of special legislation, which the application of this principle necessarily entailed, brought with it a reaction. About the middle of the nineteenth century various attempts were made by the people of the states of the American union to limit the power of the state legislatures in passing special legislation applicable particularly to municipalities. Attempts were also made to withdraw completely from the legislative competence certain matters which were regarded at the time as of exclusively local concern. The success which attended this effort on the part of the people cannot here be stated

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in detail. It is sufficient to say that the anticipations of those who believed that, through the constitutional limitations which were adopted, the powers of the legislatures would be diminished, were not realized. The courts, largely through the recognition of the device of classification, have, since the adoption of these constitutional provisions, permitted a great deal of legislation which was really special in character.

Later on the attempt was made, beginning particularly with the Missouri constitution of 1875, to grant to the people of specific cities, or of all the cities of a certain size within the state, the right to draw up their own charters of local government, which, after being adopted, should not be susceptible of amendment by the state legislature. This method of securing to the people of a locality the right, not merely to choose their own officers but to determine the policy to be pursued by the city, has been measurably successful. It has not had as wide-reaching effects as were expected, because the courts at once began to differentiate a field of municipal government, to which the principles of home rule should be applied, from a field of state government in which the legislature of the state should still be permitted wide freedom of action.

This method has been, however, the most successful American attempt to solve the problem of municipal home rule; but the result of this attempt has been merely to secure to the people of the cities the power to regulate, free from state interference, matters which may be classed under the general head of local improvements, and to fix in its details the municipal organization necessary to carry on in this field the undertakings which may be determined upon by the municipal authorities. Over all other portions of what we are accustomed to regard as municipal government, the legislative control, from whose exercise very many evil results have flowed, still remains nearly as complete as before the adoption of these constitutional provisions.

A different conception of local self-government has been developed in continental Europe. While the Anglo-American conception laid emphasis originally upon the power of the local areas to select the officers discharging govermental functions within their limits, the continental European conception laid

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emphasis upon the power of some local legislative body, representative of the municipality over which it had jurisdiction, to determine the local policy which was to be adopted and to put it into local execution. The principle at the bottom of the continental European form of municipal home rule finds expression in the rule of law that the municipal corporation is not an authority of enumerated powers but rather one of general powers, and that, in order to show the authorization to exercise a specific power, all that the municipal corporation shall be obliged to do is to prove that it has not been forbidden to act by the legislature of the state, either directly, or indirectly through the grant of the power to some other authority. The result of the adoption of such a rule of law as to municipal powers is a presumption in favor of the right of a municipal corporation to take action. This presumption does away for the most part with the need of special legislation by the legislature of the state in which the corporation is situated. As a result of it the city may, when not forbidden by the state government, determine the sphere of its activity and may, when not subjected to the control of the state government, reach its determinations independently of the influence of any authority in the state government.

If no further step had been taken this method of solving the problems of municipal home rule would have seriously imperiled the unity of the state government; for, while it paid due regard to the local interests of the municipalities, it paid practically no regard to the interests of the state government as a whole. As a matter of fact, however, a further step has been taken. The legislative decentralization, which is characteristic of this method of solving the question, is accompanied by an administrative centralization. In accordance with the principles of this administrative centralization, the actions of municipal corporations, whether these actions are regarded as affecting the interests of the state as a whole or as affecting merely the interests of the municipality, are subjected to an administrative control on the part of the state. By means of the exercise of this control, it is possible for the central government of the state to prevent the municipality from taking action which would be inconsistent with the general policy of the state government, or which, in

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the opinion of the state government, would be inexpedient for the municipality itself.

Let me make this point clear by a concrete illustration, which will perhaps be more forcible if it involves a comparison of European with American conditions.

By the American law no municipal corporation is recognized as possessing the power of issuing negotiable bonds without express or implied authorization of the state government. As a general thing the authorities of the state government have not granted to municipal corporations any general power of issuing such bonds. The legislature has either confined the municipality in the exercise of its borrowing powers to specific purposes, or has fixed a limit which the total amount of bonds issued by the city may not exceed. If a city desires to issue bonds for a purpose which has not been authorized, or in amounts in excess of the limits prescribed by the legislature, it is necessary for such city to obtain legislative authority in order that its action in issuing bonds shall be regarded as legally valid. The control which the state legislature thus exercises over municipal corporations is much more extensive than at first sight appears; for, in the conditions of modern life, cities are unable to undertake many of the enterprises which it is necessary that they shall undertake without exercising the borrowing power. In determining whether it shall give the city the desired authorization, the legislature may of course be governed by its view of the expediency of the proposed undertaking considered apart from the financial side of the question. Thus, it may refuse its consent to an issue of bonds for a municipal electric light plant because it believes that electric lighting is not a proper function of city government. Such is the method which has been adopted in the Anglo-American law for preventing the city from exceeding its power or taking unwise action.

In continental Europe, on the contrary, in accordance with the principle of law governing the relations of municipal corporations, a municipality has generally the power to enter upon such undertakings as electric lighting without obtaining the special permission of the state government. It has also the gen-

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eral power to borrow money and issue negotiable securities. The law regulating municipal corporations provides, however, that this power, whose exercise by the city is recognized as perfectly proper, shall not be exercised in specific cases or beyond specified amounts except with the approval of the central administrative officers of the state government. Under such conditions the state government may indeed refuse its consent to a proposed loan for a particular purpose because it disapproves of this purpose, but it may not prevent the city from acting as it wishes if the proposed enterprise does not involve the exercise of the borrowing power. The state control over cities on the continent is, as compared with the state control in the United States, administrative rather than legislative in character, and it aims to prevent municipal extravagance rather than substitute the state judgment for the municipal judgment as to what it is expedient for the city to do.

If we compare these two systems of securing municipal home rule, particularly from the point of view of the interests of the cities, it can hardly be questioned that the continental European system has one great advantage: it encourages the municipal corporations to enter fields of activity which, under the Anglo-American system, it is difficult if not impossible for them to enter. A comparison of municipal government in this country and in continental Europe will reveal the fact that the sphere of activity of European municipalities is much larger than that of American. Much more is left in this country to private corporations and private individuals than in Europe. Of course it would be improper to say that the greater extent of European municipal activity is due entirely to the methods which have been devised for regulating the competence of municipal corporations. The great extent of European municipal activity is in large part due to the different ideas which prevail on the continent of Europe as to the propriety of governmental action in general. It cannot, however, be doubted that the methods adopted for permitting municipal bodies to determine their own sphere of activity has had an important influence upon the solution of the question. Take, for example, the present position of the city of Chicago. As is well known, the people of that

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city have affirmed by a large vote the expediency of the municipal ownership and operation of the street railway system. They are, however, almost as far from the realization of their purpose as they were before this vote was cast, because of the extremely narrow financial resources of the city. In this instance the narrowness of the financial resources of the city is due not altogether, if at all, to the attitude of the legislature of the state of Illinois, but rather to the attitude of the people of the state as exhibited in the state constitution, which seriously limits the debt-incurring capacity of the city as well as its tax-levying power.

The continental method of assuring to cities a reasonable home rule is to be preferred, not only because it would appear to afford them greater freedom of action, but also because the control over those functions of government attended to by city authorities which is exercised by the state is, under the continental method, less liable to be influenced by partisan political considerations. This is so because the legislature, which under the American system exercises the state control over cities, is, and must of necessity be, the most distinctly political body in the state. It is in the legislature that questions of state policy must be determined. In the elections to the state legislature, party influences must be controlling. It is almost futile to expect that a body whose members are selected as a result of a distinctly political struggle and whose functions are so exclusively political in character, shall, when it comes to exercise its control over cities, cease to be governed by partisan political considerations. That a large portion of the legislation of the American commonwealths with regard to city affairs has been and is actuated by such considerations is a fact so well known that neither evidence nor illustration is needed; it is a fact of which public opinion takes judicial notice.

While of course it would be futile to expect that, under the conditions which exist in American political life, a control exercised over the cities by the central administrative officers of the state would be absolutely uninfluenced by partisan political considerations, it is none the less true that administrative officers of the state government are less liable to be governed by such

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considerations than is the legislature. Acknowledgment of this fact is made by practically every one who has endeavored to obtain a reform in the educational and charitable administration, where that reform has consisted in endeavoring to get these branches of administration out of politics. In almost all cases the attempt is made to get these branches of administration out of the control of the legislature and into the control of state administrative officers. If we may judge by the testimony of those who have been influential in securing such reforms, it it safe to say that the means adopted have been measurably successful in attaining the end desired.

The results of our examination of the problem may be summed up by saying that the only functions of government discharged within the cities to which the principles of municipal home rule are applicable are those which, at a given time, have an interest which does not transcend the limits of the city; that, in a broad way, such matters may be embraced within the general term municipal improvements; that the proper means of securing the desired home rule with regard to such matters is to recognize that the municipality is an authority of general powers, subject, however, in the exercise of these powers, to state control; and that this control should be administrative rather than legislative.

Such a complete reversal of American policy as the adoption of these recommendations would involve may be regarded by many as something in the nature of a counsel of perfection, and the recommendations themselves may be looked upon as possessing such an academic character as to have no practical importance. In a measure such a criticism would be true. At the same time it is well to remember that the tendency of many, if not of most, of the constitutional provisions which have been adopted in the hope of curbing the power of the legislature over cities has been to widen more and more the powers of the cities in determining the policy which they wish to pursue. It is well to remember, further, that the extremely decentralized character of the original administrative system of the American state is gradually disappearing. In matters of public health, of education, of charities and correction, the central administration of

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the states is receiving more and more power, while a movement is noticeable towards subjecting the accounting operations of cities to central administrative control. It is, therefore, true that the trend of American administrative development is in the direction of adopting the continental principle to which attention has been called. While it may be foolish to expect that all the steps necessary to the adoption of the recommendations which have been made will be taken in the immediate future, it is not extravagant to believe that in the more distant future the changes which have been outlined will be made. In the meantime it would be well for those who believe in municipal home rule as to those matters to which it is applicable to bend their efforts towards securing a further diminution of the powers of the American state legislatures. The most successful scheme, on the whole, which has yet been devised is probably that to be found in the Missouri constitution of 1875, which has already found so wide an acceptance in the states of the Pacific coast.

FRANK J. GOODNOW.

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HOW ENGLISH TOWNS ARE MANAGED[1]

IT is now common knowledge that the people of the towns of Great Britain enjoy a better administration of their public affairs than our townsfolk have obtained. For illustration, let us take an ordinary manufacturing town of medium size, to which a traveler would ascribe no pretension of superiority in any respect. To strengthen the illustration, it shall be a town as nearly as may be like Jersey City or Newark, New Jersey, in size and circumstances. The city[2] of Nottingham, situated

[1] The greater part of this article was delivered as an address before the board of trade of Jersey City in February, 1904. The information respecting the city of Nottingham was derived from a short visit there in the summer of 1903. For much of it the author is indebted to the courtesy of Mr. F. I. Fox, assistant accountant of that city. The statements respecting its finances are taken from the city's official abstract of the corporation accounts for the year ending March 31, 1903. The published reports and accounts for 1903 of the city's school board and board of guardians of the poor and water department were also examined. The pound sterling is reckoned in all cases at five dollars. Mr. Fox has had the kindness to read the manuscript of this article, including these notes, and the statements and figures respecting Nottingham have been made to agree with his corrections.

Among the books consulted in the preparation of the address were the following: M. D. Chalmers, Local Government (London, 1883); Edward Jenks, English Local Government (London, 1894); W. B. Odgers, Local Government (London, 1901), A Century of Law Reform (London, 1901), Report of the Local Government Board for 1900 (London), The Municipal Year Book (London, 1903); M. R. Maltbie, English Local Government (New York, 1897); Albert Shaw, Municipal Government in Great Britain (New York, 1895), Municipal Affairs (New York, 1897–1901). A graphic account of the working of an English town government is given by Elsie Watson, in "The Municipal Activity of an English City," POLITICAL SCIENCE QUARTERLY, vol. xvi, pp. 262 *et seq.* (1901).

The figures respecting the finances of Jersey City and Newark are taken from the comptrollers' reports of those cities, supplemented by explanations from Mr. George R. Hough, comptroller of Jersey City, and Mr. George Forman, auditor of Newark, in personal interviews.

[2] All the incorporated towns of England are called "boroughs," and it is of these only that this article treats. The word "city" is a sort of honorary title. A borough is called a city if it is the seat of a bishop and has a cathedral, or if the title of city has been specially conferred upon it. That is all that distinguishes a city from any other municipal borough. Very little that is said in this article applies to London. The organization and administration of that metropolis are altogether exceptional.

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about 126 miles north and west of London, covers a territory of about seven by three and a half lineal miles. Jersey City covers about six and a half by three and three-quarters miles in extreme length and width. Like our two cities, Nottingham contains much land cultivated by the farmer and market gardener. Like them it is also a manufacturing town, and is a centre for two or three important railways. Its population in 1901 was 239,752, about the same as that of Newark (246,070 in 1900) and not very much larger than that of Jersey City (206,433 in 1900). It is growing rapidly; the increase in the last decade was twelve per cent and since 1870 over 170 per cent. Moreover, its area is now more than five times greater than in 1870.

It is not a beautiful nor even a pretty town. An American visitor is rather repelled by the monotony of red brick buildings, by the high brick walls about the grounds of residences and, in the town's centre, by the tangle of narrow, winding streets. That part bears ear-marks of mediæval times; for its history begins before the Conquest and its first charter was granted more than 700 years ago.

What have the people of Nottingham done in these rather unpromising circumstances to make their town a desirable place to dwell in? They have paved their streets well and evenly with stone or with macadam; they use no cobblestones. They have also clean streets. I rode about the city for some hours, through lines of shops, of stores, of fine dwellings, through the slums also, taking special note, and I saw not one ill-paved or dirty street. Litter there was on some of them; small bits of paper, scattered straws and the like. But it was the litter of the hour or of the day; none of the matted, sodden stuff, the product of days or weeks of neglect, with which we are familiar. The street cleaning is done by the city itself, with its own teams. Part of the garbage which it collects from streets and houses is sold, part is burned in destructors. These destructors are owned and operated by the city. There is a system of sewers, of course, and the river Trent skirts the town, but the sewage does not go into the river. It goes to a sewage farm a few miles out of town, where it is disposed of by downward filtra-

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tion and irrigation. This farm is owned and operated by the city. It contains nearly 2,000 acres. The sale of its products in the fiscal year 1902–03 included over $35,000 for live-stock; over $12,500 for butter and milk; over $7,000 for other products. The revenue so derived about equaled the cost of operating the farm. The interest on the bonded debt incurred to purchase and equip the farm, and some other charges, were paid from the rates. In England all local taxes are called "rates."

The city owns and operates a water-plant, supplying water to the people at a total cost of something under $500,000 a year, including interest on the water debt and charges for depreciation and sinking fund.[1] The city also owns and operates a gas-plant, supplying gas at a maximum charge of 60 cents per 1,000 feet. It owns and operates the plant which supplies the town with electrict light and power. It owns and operates an excellent electric street-railway system. The fares vary from two cents to eight cents, according to the distance traveled. The average fare, I think, must be considerably under five cents, but no transfers are allowed. The city also owns and operates the markets. It owns, maintains and leases to tenants a block containing about 80 flat-houses, called "artisans' dwellings," built by it for the use of laboring people; and also tracts of land containing about 370 small houses, which it rents to poor people on weekly payments. Much of the land on which these latter houses stand the city has owned for centuries.

The artisans' dwellings pay only the cost of maintenance and repairs; interest and sinking-fund charges are provided from

[1] The cost of the water department for the year ending March 25, 1903, was between ninety and ninety-five thousand pounds ($450,000 to $475,000), including interest on the water debt and sinking-fund charges. The cost of Newark's water department (1902) was $828,787; *cf.* Comptroller's Report, p. 67. That of Jersey City (1902–03) was about $945,000; *cf.* Report of the Board of Street and Water Commissioners, 1903. Nottingham is planning a new water supply, which will, no doubt, increase the annual cost.

The water rates for dwellings are upon a scale based on the annual rental value of each house. A house without bath or water closet, of a rental value of £50, pays £2, 2*s.* a year. A bath and water closet cost only £1 extra. For business purposes, water is generally sold by meter.

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the rates. The other properties, that is, the markets, land and houses (except artisans' dwellings) and the water, gas, electric and tramway plants, are so managed that, after paying costs of maintenance and repairs, interest, sinking-fund charges upon the funded debts incurred from them severally, and after setting aside reserve (depreciation) funds for all of them, except markets and houses, they yielded the city, in the fiscal year, 1902–03, a net revenue of over $300,000.[1]

[1] The net revenues from the several properties of the city contributed in relief of rates for the year ending March 31, 1903, as shown in the Abstract of Accounts are:

Markets and fairs [p. 18]			£5,181
Land and Houses:			
Chamber estate [p. 16]		£12,601	
Bridge estate [p. 170]: Receipts	£9,902		
Payments, interest and sinking fund	7,298		
		2,604	
		£15,205	
Freeman estate [p. 176]: Excess of expenditure (including interest and sinking fund charges) over income: *deduct*		4,537	
			10,668
Water department [p. 208]			5,000
Gas department [p. 208]			24,516
Electricity department [p. 208]			6,500
Tramways department [p. 208]			12,000
Contributed to city in relief of rates			£63,865

Of the city's funded debt, about £70,800 is charged against the markets and fairs and the Chamber estate (p. 287); but interest and sinking fund charges upon that part of the debt do not appear to be charged against the income from those properties. Apparently a deduction of some £2,500 for those charges should be made from the above stated net revenues. Interest and sinking fund charges are first deducted from each of the other accounts above mentioned in ascertaining its net revenue. Also deducted are reserve (depreciation) fund charges on each of the following accounts:

The electricity department shows a reserve (depreciation) fund of £15,480, against a capital expenditure of £374,478; about 4 per cent (pp. 228–9).

The reserve (depreciation) fund of the tramways department is £20,156, against a capital expenditure of £534,386; about 3.7 per cent (pp. 250–51).

The reserve fund of the water department is £17,442, against a capital expenditure of £1,007,881; about 1.7 per cent. *Cf.* Statement of Accounts of Water Department, March 25, 1903, p. 7. I have not seen the accounts of the gas department and do not know the amount of its reserve fund.

Although the Freeman estate account showed a deficit for the year stated, its balance sheet showed an excess of income over expenditure (presumably for the whole period the accounts have been kept) of £2,964.

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The city has also a good system of public education. The English system differs so much from ours that space cannot be taken here to describe it. It is enough to say that compulsory education exists and is enforced for all children within the school age, which ends with the fourteenth year; that education is practically free of charge in the primary schools, while in the higher schools the charge is so low as to be almost nominal; and that, in effect, the whole school population is either in regular attendance or absent for reasons satisfactory to the authorities.[1] Under the English system, a considerable proportion of the cost of the city educational department is contributed from the national treasury.

The city also owns and manages, at public cost, a school of art and design; a school for technical education; a university college at which students may qualify themselves to pass the examination of the University of London and to take the degree granted by the latter; a large free public library; a large museum of natural history and a noble art gallery. All of these are housed in spacious public buildings; and the collections in the museum and art gallery are large enough to surprise an American unaccustomed to such municipal luxuries. The art and technical schools and the university college collect moderate fees, and they receive a considerable contribution from the national treasury; but most of the cost of maintaining these departments of education is paid from the revenues which the city derives from the profitable undertakings mentioned above and from the rates.

The city also maintains two lodging-houses, the income from

[1] The Final Report of the School Board, September 29, 1903, states (p. 50), "that practically all the children in the city of school age are either actually in school or excused for some satisfactory reasons." The same report shows (p. 52) that the "number of children on rolls of public elementary schools" is 44,689, and that the number "in average attendance" is 38,695. "Percentage of average attendance compared with number on roll, 87.1." These figures were for the quarter ending September, 1903. The population at that time was 243,191. The enrolled pupils were 18.5 per cent and the average attendance 16.3 per cent, of population. "No fee is charged in any of the ordinary council schools," but in certain specified "higher elementary mixed schools" the fees are from 10*d.* to 5*s.* per quarter. *Cf.* Scale of Teachers' Salaries, *etc.* (1903), p. 17.

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which falls a trifle (about $170) below the cost of maintenance; a public cemetery, which is self-supporting; public baths; an "epidemic" hospital and a lunatic asylum.

The city's public parks include an arboretum of some sixteen or seventeen acres in the centre of the town, filled with flowers, shrubs and trees; a large open tract, once a race-course, now a park, not yet very much improved; and a handsome drive, lined with trees, along the embankment of the river Trent upon the outskirts of the town.

There are also the usual departments of police and of fire.

How much does all this cost, in taxes? and how does that burden compare with the cost, in taxes, of local government in Jersey City and Newark? In making the comparison, it is necessary to include the cost to the cities of county government, because, in Nottingham, that item cannot be separated. For the territory within that city is a county, under the government of the city authorities, who maintain the full county machinery for the relief of the poor and the administration of justice—poor-house, asylum, hospital, courthouse and jail. In the comparison, it must also be noted that each of the three cities receives part of the cost of its local government from state taxes collected by the state throughout its territory. Out of the sum so collected, the state returns to each city a part which is designed to be proportioned to the amount contributed by the taxpayers to the state tax, or to the property within that city taxed for state purposes, or which is repaid on some other principle of distribution. Familiar instances to the people of New Jersey are the return by that state to its cities of part of the tax collected upon railroad property and upon certain franchises, and the distribution by the state to the cities of the state school tax. From the comparison, finally, I exclude the water-rates in the three cities, because these rates are rather a compensation for goods sold than a tax, and because in each city the water supply is self-sustaining. Omitting water-rates, the total sum taken by taxation from the taxpayers of the city and from the taxpayers of the state to pay the cost of local government, was:

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In Newark (fiscal year, 1902)	$3,861,066
In Jersey City (fiscal year, 1902–03)	3,292,317
In Nottingham (fiscal year, 1902–03) (£453,278)	2,266,390

In each case these figures include, as far as I can learn, the total cost of local government, *i. e.*, the cost of caring for the poor, of administering justice (except some judicial salaries), of public education and of all other departments of municipal affairs which are maintained by taxes, except the cost of the water supply. The share of taxes paid by Newark for county purposes, exclusive of the state school tax, was $687,992; by Jersey City, $550,008.

The sums contributed by the state from state taxes to Nottingham and to Newark were nearly equal; to Jersey City, considerably more. In each case it was:

To Newark	$454,952
To Jersey City	675,753
To Nottingham (£96,684)	483,420

In each case is included the sum contributed by the state for educational purposes.[1]

[1] Following are the items given me by the city auditor of Newark and the comptroller of Jersey City:

NEWARK. City tax levy, including poll tax		$2,718,122
County tax (exclusive of state school tax)		687,992
Total raised within city for city and county purposes		$3,406,114
Add sum received from state treasury:		
From state railroad tax	$13,387	
From state franchise tax	10,120	
From state school tax	431,445	
		454,952
		$3,861,066
JERSEY CITY. City tax levy, including poll tax		$2,066,556
County tax (exclusive of state school tax)		550,008
		$2,616,564
Add sums received from state treasury:		
From state railroad tax	$375,000	
From state franchise tax	52,000	
From state school tax	248,753	
		675,753
		$3,292,317

NOTTINGHAM. The figures given are from the Abstract of Accounts, from the Re-

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But how much must the townspeople pay in local taxes? Deducting these state contributions, the cost of local government, including county government, paid by the townsfolk in local taxes is:

In Newark	$3,406,114
In Jersey City	2,616,564
In Nottingham (£356,594)	1,782,970

The people of Nottingham thus pay in local taxes for local government, including county government, about three-fifths of the amount paid by the people of Jersey City, and about one-half of the amount paid by the people of Newark, for the same purposes.

In making these comparisons however, some caution is necessary. The general scale of wages and salaries (except high official salaries) is much lower in England than in New Jersey. There are differences also in other conditions. For instance, the fire department of Nottingham is a small affair compared with ours; which may be accounted for, in part, by the absence of wooden buildings there. Practically all buildings in Nottingham are of brick or stone, and roofs are generally of slate or tile. But when all allowances are made, it is pretty certain that the taxpayer of Nottingham gets more for his money than

port of the Guardians of the Poor, 1903, and from the Final report of the School Board, 1903.

The general district rate, *i. e.*, the city tax levy [p. 60]		£225,480
Rates for school board [p. 65]		65,000
Rates for guardians of poor [their Report, p. 15]		66,114
Total raised by local rates for city and county		£356,594
Add government grants:		
For guardians of poor [p. 205]	£13,951	
For technical school, school of art, university college [pp. 114, 116, 132, 150, 203]	11,944	
From taxation of local licenses, probate duties, excise duties (in relief of local rates)	22,500	
For police superannuation fund	1,429	
To school board directly [their Report, p. 58]	46,860	
Total from national government		96,684
		£453,278

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the taxpayer of Newark or Jersey City, and that his advantage is due to better organization and better administration of municipal government.

The distribution of the burden of taxation is based upon a totally different principle from that adopted here. Local taxes or rates are assessed in England exclusively upon rentable real estate and in proportion to the amount of yearly rents which the property will bring. Personal property and vacant lands incapable of being rented are not assessed for local taxes. As the whole burden of local taxation falls upon rentable properties, the taxes upon these are higher than here; but on the other hand, the unhappy owner of useless, vacant land in our cities, if he could transfer it to Nottingham, would be altogether relieved from local taxation. Agricultural lands are assessed for rates at one-fourth their rental value.[1]

What are the debts of the cities?[2] The sinking-funds being deducted, the respective debts are:

Newark (January 1, 1903)	$15,444,798
Jersey City (December 31, 1902)	16,039,617
Nottingham (March 31, 1903) (£4,987,625)	24,938,125

[1] The local rates in Nottingham for the year 1902 were: for general municipal purposes, 4*s* 8*d*; for school purposes, 1*s* 6*d*; for poor relief, 1*s* 7*d*; making a total of seven and three-quarters shillings in the pound; which is about 38 per cent. A property assessed at a rental value of £100 a year must thus pay in rates about £38. The assessors usually assess at somewhat less than the actual rental value. This difference between actual and assessed rental values varies in different towns. I was informed that a 15 per cent deduction from actual values would probably leave nearly the average of the assessed values. The total rateable value of the city is £1,010,000. This is the assessors' valuation of the total yearly rentals of the city for the purpose of local taxation. The assessment is made against and the tax is collected from the occupier of the property, whether owner or tenant. As tenants must pay the rates upon the property they occupy, rents are much lower than in America. The landowner, therefore, pays the rates (or his share of them) indirectly. The rates are collected very closely. In the year ending March 31, 1903, only £500 is set down as "irrecoverable," and only £545 as "arrears carried to next year" (pp. 60, 66).

[2] NEWARK. *Report of Comptroller for year ending Dec. 31, 1902.*

Total funded debt	$19,049,000
Less sinking fund	5,550,202
Net funded debt, including water and market debts	13,498,798
Add temporary loans [p. 4]	1,946,000
	$15,444,798

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Though the total net debt of the English city is much the largest, yet when allowance is made to each town for the part of its debt charged against self-sustaining undertakings, Nottingham's debt is nearly the same as that of Jersey City, though larger than that of Newark. For each city carries on one or more profitable or self-sustaining business undertakings, for which a stated part of its debt is incurred and which pays the interest and will finally pay the principal of the part of the debt charged against it.

The only self-sustaining business undertaking in Jersey City is the water supply; Newark has the water supply and the market; Nottingham the water supply and the several profitable businesses mentioned above. Deducting the part of the net

Deduct water debt [p. 12]	$9,847,000		
Less sinking fund	1,879,803		
		$7,967,197	
Deduct debt for market	$335,000		
Less sinking fund	147,610		
		187,390	
			8,154,587
Net debt to be paid by taxation			$7,290,211

JERSEY CITY. *Report of Comptroller for year ending December 1, 1902.*

Total funded debt, including $709,096, "improvement certificates" and $1,244,588, "temporary loan" bonds [p. 5]			$20,064,393
Less sinking fund [p. 6]			4,024,776
Net debt, including water debt			$16,039,617
Deduct water debt [p. 31]	$5,155,000		
Less sinking fund	797,403		
			4,357,597
Net debt to be paid by taxation			$11,682,020

As part of the assets against their debts, the Comptrollers' Reports of Newark (p. 4) and Jersey City (pp. 7, 43) show arrears of taxes and of assessments for special public improvements (both are liens on lands), as follows:

NEWARK.	Taxes		$655,334
	Assessments		1,627,704
			$2,283,038
JERSEY CITY.	Taxes (arrears for many years)		$4,487,335
	Assessments		2,268,800
			$6,756,135

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debt incurred for these purposes, the remainder which must be paid by taxation is:

In Newark	$7,290,211
In Jersey City	11,682,020
In Nottingham (£2,221,218)	11,106,090

To sum up the results, it appears that the people of Nottingham get much more municipal service than the other two cities give their people, and that the cost of that service, in taxation, is very much less. Against this showing we must allow for certain differences in economic and other conditions. In respect of the amount of the debts which must be paid by taxation, that of Nottingham is nearly the same as that of Jersey City, but much more than that of Newark; but the English city has very much more to show for its debt in useful but non-revenue-producing institutions.

For the following figures I am indebted to the kindness of Mr. Fox.

NOTTINGHAM. *Abstract of Corporation Accounts, March 31, 1903.*

Consolidated 3 per cent stock		£3,749,105	
Mortgage loans		774,081	
Mortgage loans, gas department		142,900	
Gas debentures	£61,291		
Gas annuities	344,850		
		406,141	
Water annuities		350,862	
			£5,423,089
Less net sinking fund			435,464
Total net debt			£4,987,625
From total net debt			£4,987,625
Deduct portions charged against self-sustaining properties, *viz.*:			
Of consolidated stock	£1,867,186		
Less corresponding portion of sinking fund	155,545		
		£1,711,641	
Of gas loans, debentures and annuities	£899,903		
Less corresponding portion of sinking fund	71,235		
		828,668	
Of mortgage loans		226,098	
Net amount charged to self-sustaining properties			2,766,407
Amount of debt to be paid by taxation			£2,221,218

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Who manages all this business in Nottingham? The organization of city government there is extremely simple. The city council manages the whole of it, except the care of the poor. The latter duty is charged upon a board called the "guardians of the poor," who are elected by the rate-payers of the city. Prior to 1904 there was also a separate school board elected by the rate-payers; but that board, in all English incorporated towns, has recently been abolished, and its duties have been transferred to the council. The councillors are elected for three-year terms by the rate-payers, male and female. No one may vote unless he or she pays rates. The election is by wards, each of the 16 wards electing three councillors, making 48 in all. The councillors, sitting in council, choose sixteen persons called aldermen, who hold office for six years. Aldermen and councillors have precisely the same powers and functions in the administration of the city's business. They sit together and act as one body. As such, they are called the town council. They choose one of their own number as mayor. (They may choose one not of their number, but they never do.) He presides at their meetings and represents the town on public occasions, but he has no important administrative powers in the city's business other than those held by every member of the council. Every department of city affairs—police, fire, tramways, water, gas and every other—is managed by a committee of the council. These committees are responsible for the conduct of their several departments; but their acts must be approved by the council. At the head of each department the council places an officer, selected by the appropriate committee, whose experience is expected to qualify him for that special work. He acts under the supervision of the committee for that department. All appointments to office are made by the council, and all salaries are fixed by it. Very few of the offices are established by law; nearly all are created, as well as filled, by the council. In every case (except, of course, that of the mayor and members of council) the tenure of office is at the pleasure of the council; but custom insures the continuance of the officers in their places as long as they give satisfaction in the performance of their duties. The same rule of permanent tenure, subject to

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a satisfactory discharge of duty, governs the employment of all inferior employees. Change of officers or of employees for partisan reasons does not occur. The business of the city is conducted upon the same principles as the business of any large private corporation. The council is the board of directors, the rate-payers are the stockholders.

There is nothing exceptional in the case of Nottingham. Excepting London, every one of the three hundred and more incorporated towns of England is organized under the same general municipal law, with the same form of government and nearly the same general powers, though many of them have certain special powers given by special laws. Moreover the form of organization and the character of the general powers do not depend upon the number of inhabitants. Chippenham, with less than 5000 people, has the same form of government and much the same general powers as Manchester and Birmingham with populations of over half a million each. Pretty much all of the larger towns offer to their people advantages and public services similar to those found in Nottingham. The unincorporated towns have a somewhat different form of government, but their affairs are administered upon the same principles.

If you read what is written in England about municipal government, and if you talk with the people there upon that subject, you will rarely hear complaints of instances of corruption, and never complaint of general corruption or general mismanagement. The standard of public administration to which the people are accustomed has created a public sentiment which will not tolerate either corruption or mismanagement. The only complaints that I heard concerned the increasing rates and the growth of municipal debts. There is not space here to consider the policy of municipal ownership and management of public service undertakings. It is a policy of recent origin in England, and public opinion is still divided respecting it; but there is no question that the people of the towns generally approve it or acquiesce in it, for it is fast becoming a general municipal policy and there appears to be no organized effort to check it. That very fact bears strong testimony to the excellence of the administration of town affairs. It would be impossible to man-

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age these great business enterprises with satisfaction to the ratepayers unless the management were conducted by experienced men of special qualifications, following a continuous policy in developing their work. These conditions of success are possible because there is a high civic standard among the people and because of a few simple principles of municipal government which they apply, namely:

(1) *The principle of selection for fitness in filling offices, and permanent tenure while fitness continues.* This principle insures two things, expert knowledge and continuity of policy in planning and executing great municipal enterprises, and a motive for every officer and employee to give undivided attention to the duties of his place in order that he may retain it.

(2) *The principle of non-interference by the legislature in municipal affairs.* Although Parliament still enacts from time to time special local bills to confer particular powers upon certain towns, yet that practice is decreasing; and in contrast with the reckless intermeddling of our legislature in municipal affairs, it may be said that Parliament's policy in this regard is one of non-interference. It never, by special statute, changes the frame of town government in any respect, nor creates nor abolishes a town office, nor fixes the amount of a municipal salary. Such local municipal acts as are passed are generally designed to confer some enlargement of municipal power upon towns which petition for it. But the powers conferred by general law upon incorporated towns are so much larger than those usually enjoyed by cities here that there is less occasion for applications for special powers. The principle of local self-government, of local self-responsibility, is carried much further in England than here.

(3) *The principle of central administrative control.* We know, to our great cost, altogether too much of central legislative control. But the principle of central administrative control is a very different thing. The control exercised by a state board of taxation over local taxing authorities, and that exercised by a state department of education over local educational authorities, are instances with which we are familiar. The principle implies general laws upon the given subject with a

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permanent state board authorized to see that those laws are obeyed by the local authorities, and authorized also to exert some limited measure of discretionary control over their acts. Such a board naturally adopts a policy. It is guided by certain principles of action. It must give public hearings before deciding the public disputes submitted to it. It acts under a sense of responsibility. It must make frequent reports and explain and justify its official doings. State control of this kind is as far removed from the capricious and irresponsible legislative meddling from which we now suffer as is the judicial control exercised by state courts.

The English have a Local Government Board which exercises this administrative control over all the municipalities of Great Britain. The president of it is a member of the cabinet. The board and its work are a growth of over half a century. It has become a great state department, whose duties can not here be recapitulated. It has accumulated and published, in its reports, an enormous mass of valuable information respecting the conditions of municipalities. It is consulted by and is constantly advising local authorities. Through it every town has access to the experience of other towns. The best managed may become a model for the others. All local bills introduced into Parliament are referred to this board for examination and report. Through its auditors, it audits the accounts of smaller municipalities (not those of incorporated towns) and may disallow illegal items. If a town desires to raise a loan it does not usually ask for a special law to authorize it (though it may do so) but applies to the Local Government Board, which, after a public hearing and, if necessary, an investigation of the circumstances, grants or refuses leave for reasons stated. Every municipality, including incorporated towns, must submit its annual financial account to this board. The board has large investigating powers. With all this, however, there is very little power of interference with local self-government and local self-responsibility. The initiative is with the people and their local officers, and there is hardly any check upon their power of expenditure, except in the incurring of debt.

But the civic conditions which I have described and the

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healthy public sentiment which makes them possible are of recent growth. In 1830 the conditions of English towns and town government were far worse than any conditions generally prevailing in our cities at present. Those conditions can be understood only when considered in the light of English history. Prior to the American Revolution the English were a rural, agricultural people. In 1750 they numbered only about six or six and a half millions. Relatively few Englishmen then had seen what we should today call a large town, for there was probably not a town in England, except London, with more than 50,000 inhabitants. There were not only no railroads but no macadamized roads, and no good wagon roads at all. The people staid at home for want of means to travel. There were no canals, there was no steam power, there were no factories such as we should now call by that name. England's colonies were infants, and she had then no maritime supremacy, no great foreign trade. In 1770 that trade was only about 145 million dollars. It was not till the last twenty or thirty years of the century that there came the inventions of Arkwright and Crompton in spinning and Watt's invention of the steam engine, which were among the chief agencies that created a new economic world on this planet and changed, within a lifetime, the conditions of civilized life more than they had been changed in centuries before. These led the way directly to the factory system, to the steamship, the railroad: to Birmingham and Liverpool: to the British empire of trade. In the first fifty years of that century, England's exports of cotton goods doubled; in the last twenty years of it they increased eightfold. During those last twenty or thirty years a great system of turnpikes and canals was begun and partly built, and internal travel and transportation on a large scale became possible. During the first thirty years of the nineteenth century the "industrial revolution" in England became an accomplished fact. The English, having been an agricultural, suddenly became a manufacturing people. The factory system arose and crowded the population into towns. There was no local governmental machinery capable of regulating the new conditions, and for a long time there was no thought of adequate regulation. In his

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History of England, in which most of the above mentioned circumstances will be found detailed, Mr. Lecky says:

> The sanitary neglect, the demoralization, the sordid poverty, the acute and agonizing want prevailing among great sections of the population of our manufacturing towns during the fifty or sixty years that followed the inventions of Arkwright and Crompton can hardly be exaggerated. The transition from one form of industry to another, the violent fluctuations of wages and of work, the sudden disruption of old ties and habits and associations, the transfer of thousands of female spinners from their country homes to the crowded factory, the vast masses of ignorance and pauperism that were attracted to the towns by vague prospects of employment, have all led to a misery and demoralization of an extreme character.[1]

The foregoing account may give a faint notion of the economic and social conditions of the towns in 1830. The governmental conditions were hardly better. The era of great municipal undertakings was not then thought of. In America New York and Philadelphia were country towns in point of government; and in England borough government, such as it was, had hardly any function which we now associate with municipal authority other than the management of the corporation's property and the making of by-laws concerning the conduct of the townsfolk. The town could undertake no public works, it could raise no rates or taxes, it had no control worth mentioning over police, sanitation or education. The explanation of these conditions is found in the history of the towns. In mediæval times they had won, gradually and after centuries of contest with the crown, the right of choosing their own officers, of making by-laws and of acquiring and managing town property and certain charitable funds. But in the course of centuries the vigorous civic life of mediæval times died away. For the most part the towns became close corporations. The governing officers either held office for life, themselves filling vacancies in their own number, or they were chosen by a small body of electors, many of whom were not rate-payers. These

[1] Lecky, History of England in the Eighteenth Century, vol. vi, c. 23, p. 221. *Cf.* also Macaulay, History of England, c. 3.

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were the "freemen" of the borough, and admittance to this class conferred the "freedom of the town." The value of this freedom consisted in local privileges and in the parliamentary franchise. The electors who chose town officers, or the officers whom they chose, elected members of the House of Commons to represent the borough. Officers and electors thus became counters in the game of national politics. In the general corruption prevailing in English politics for generations prior to 1830, these borough electors sank, very generally, into a contemptible class whose franchises were notoriously at the command of the politicians and owners of great estates who knew how to bring the needed influence to bear upon them. To-day the basic principle of municipal government is public service; in 1830, the basic principle of borough government in England was individual privilege.

I copy the following description of English borough government as it existed early in the nineteenth century, from a lecture delivered in London in 1901 by Mr. W. B. Odgers, an eminent English barrister and legal author.

> There were 284 boroughs or reputed boroughs in England and Wales. But in at least 32 of them municipal institutions were extinct, and in most of the others municipal life was dead. The great mass of the townspeople were excluded from corporate privileges and from any share in the government of the town. The power was entirely in the hands of a few councillors or corporators, who were for the most part self-elected and who held office for life. They were selected on political grounds; so were the borough officers; so were the freemen. The corporate revenues were expended and the local charities manipulated to serve political ends. Municipal functions were almost entirely neglected, and jobbery, corruption, and oppression were almost universal. Everything was prostituted to maintain the political ascendency of a party or the political influence of a noble family. Never again, I trust, will any of our local institutions sink to so degraded a level. In Plymouth, where the population was 75,000, the number of freemen was only 437, of whom 145 were non-resident. In Ipswich, less than two per cent of the inhabitants enjoyed corporate privileges, and of that two per cent a large number were paupers. In Portsmouth, with a population of 45,000, the number of freemen was only 102. As a rule,

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the numbers of the privileged freemen were strictly kept down, but political exigencies sometimes created an exception. Thus at Maldon, where the average admission of freemen was seventeen per annum, 1000 new freemen were created during the election of 1826 for purely election purposes. The freemen in many boroughs enjoyed exclusive trading privileges and were exempt from borough tolls and market dues. In Newcastle his exemption from these tolls made a difference to one merchant of £450 per annum. In Liverpool the tolls were even heavier. Corporate funds were freely spent in political corruption. During the election of 1826 the corporation of Leicester spent £10,000, and even mortgaged a portion of their property, to secure the return of a political partisan. When not required for electioneering the income of the corporate property was frequently expended in feasting. The same man held several corporation offices and appointed deputies to perform the duties. Members of the corporation entered into contracts with the corporation, and lands belonging to the corporation were let to members of the corporation on terms very favorable to the members. Only 28 boroughs published any accounts of their expenditure.[1]

In these conditions the work of municipal reform must have seemed far more discouraging to Englishmen, in 1830, than the same work in our cities can now appear to us. But within the span of a single lifetime, an almost incredible transformation was effected. The series of reforms which have wrought such a marvelous change in the political and social relations of the people, began in 1832, with the Reform Act. A commission was appointed soon after to inquire into the condition of the boroughs; and their report (from which most of the facts stated by Mr. Odgers are derived) was followed in 1835 by a general municipal corporations act. This act abolished the old municipal abuses; gave the elective franchise to all inhabitant rate-payers; vested the powers of borough government in mayor, aldermen and council, and shortened their tenure of office to a few years. This act, amended and revised, is the law under which all the incorporated towns of England, except London, are now organized. But the act made no provision for great public works nor for the great departments of municipal government. When it was enacted, these steps in muni-

[1] W. B. Odgers, A Century of Law Reform (London, 1901), p. 257.

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cipal development were hardly begun, and when they did begin, they were undertaken under special acts and by special authorities, like our park commissioners and other special boards with which we are familiar. With the developing needs of growing towns, a vast number of special local authorities arose with special local powers depending upon statutes which were local, or which dealt with special subjects, such as highways, cemeteries, public health and sanitation. In England, as well as here, there has been an era of local government by special laws. Gradually, however, English municipal legislation tended toward a uniform system; the special acts were from time to time consolidated or merged into general laws; special authorities were merged into the general town government; till it may now be said that in municipal boroughs all the important powers of municipal government, except the care of the poor, are vested in one political organ, namely, the town council.

Modern English town government dates from 1835, and good municipal administration has been a steady growth from that date to this; the whole history of both falling within an ordinary lifetime. The development of great public works is a practice no older there than here; and municipal ownership and operation of profitable undertakings have now only just begun.

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A SOCIALIST HISTORY OF FRANCE[1]

SOCIALIST writers have made varied and extensive contributions to the literature of economics; and it cannot be denied that their criticisms and suggestions have greatly influenced the development of economic doctrine.[2] In the field of history Marx and his followers undoubtedly have helped to turn the attention of historians from purely political and diplomatic affairs to the more permanent and fundamental forces in the development and conflict of nations, but in this sphere the socialists have not been so productive. Apart from some disconnected studies, they have written little history. The reason for this is not hard to find. The immediate purposes of party propaganda are apparently not served by lengthy treatises on large historical themes; and, generally speaking, the effective demand for such works would not justify their publication. Nevertheless, the avowed purpose of the Socialists to force a disintegration of the intellectual synthesis upon which the defence of the present order rests will compel them, in time, to re-open the whole question of historical interpretation and construction. The first attempt of this sort—the first attempt to rewrite history on a large scale—is made by Jaurès and his collaborators in their history of France since 1789. If the present plan is followed, the undertaking is to be a large one; for five stout volumes, four by Jaurès and one by Deville, bring the story only to the close of the period of the Directory.

According to the introduction, the design of the work is to tell the people, the workmen and peasants of France, the story of their country from the eve of the Revolution to the present day, but with a propagandist and moral purpose. The underlying philosophy is that of Marx and Engels. The fundamental force in history is economic, but the complex phenomena of social life, as the authors insist, cannot be re-

[1] Histoire Socialiste, 1789–1900. Constituante, Législative, Convention jusqu' au 9 Thermidor, par Jean Jaurès; Du 9 Thermidor au 18 Brumaire, par Gabriel Deville. Paris, Jules Rouff & Cie. Vols. i and ii, 1316 pp., vols. iii and iv, 1825 pp., vol. v, 596 pp.

[2] *Cf.* Marshall, Principles of Economics, p. 64.

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duced to an economic formula.[1] As it would be false and futile to deny the relation of thought and emotion to the economic system and the precise forms of production, so it would be puerile to explain summarily by the evolution of economic relations the entire movement of human thought (vol. i, p. 7). Moreover, with the development of society, consciousness will play an increasing part in the shaping of institutions and social life; and in time man will rise from the kingdom of necessity to the kingdom of freedom (vol. i, p. 8). History must recount and explain the movements of the past; but, according to Jaurès, it has also a moral function: it should inspire men to work for an ideal; it should keep alive the memory of men who have done their duty as they saw it and without fear or hypocrisy.[2] For these reasons the volumes are dedicated to Marx, Michelet and Plutarch.

Thus restricted, the economic interpretation of history will doubtless be accepted by most scholars who avowedly aim at objectivity, though they may not agree that the historian should assume the duties of an ethical teacher—for when he undertakes such a function he usually degenerates into a partisan. Many scholars hold with the late Professor York Powell that the formation and expression of ethical judgments do not fall within the historian's province. Historians will differ, according to their class or personal prejudices, in their distribution of praise or blame; and the inveterate and unwarranted suspicion which the socialist entertains concerning the intellectual honesty and moral probity of the bourgeoisie will strip the socialist Plutarch of almost all modern heroes.

Jaurès' first volume opens with a consideration of the causes of the Revolution. The elections and the *cahiers*, the revolutionary days from June to October, the organic laws, the civil constitution of the clergy and the nationalization of the church property, the federations and the flight to Varennes are the subjects of ten long and badly built chapters. In the review of the causes of the Revolution there is little that is not

[1] Jaurès, vol. i, p. 7: "La complication presque infinie de la vie humaine ne se laisse pas réduire brutalement, mécaniquement, à une formule économique." Similarly, Deville, vol. v, p. 1: "Si le fond économique sert de base aux phénomènes politiques comme aux autres phénomènes sociaux, il n'implique pas fatalement la forme sous laquelle ces phénomènes se produisent."

[2] Jaurès, vol. i, p. 9: "Nous saluerons toujours, avec un égal respect, les héros de la volonté, et nous élevant audessus des mêlées sanglantes, nous glorifierons à la fois les républicains bourgeois proscrits en 1851 par le coup d'état triomphant et les admirables combattants prolétariens tombés en juin 1848 . . . L'histoire ne dispensera jamais les hommes de vaillance et de la noblesse individuelles."

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in accord with the conclusions of non-socialist scholars. There is a full account of the great variety of feudal burdens and of the position of the king, nobility and clergy in the old régime, but M. Jaurès does not regard the French people as the most downtrodden and oppressed on the earth. There were burdens enough, no doubt, but at the same time there were enough small holdings and enough savings hoarded up in spite of the taxes, to encourage the peasants to hope for still better things (vol. i, p. 28). The mediæval corporations which still existed were hindrances to free industry, but it is very easy to overestimate their importance (vol. i, p. 44).

For reasons of space, not for any narrow economic reasons, Jaurès neglects the great writers of the eighteenth century (vol. i, p. 752). He points out the close relation between freedom of thought in science and philosophy and the progress of industry. "The immobility of the economic life of the middle ages was connected with the immobility of its opinions (*de sa vie dogmatique*); and in order that modern production might develop all its energy, destroy all routine and break through all barriers, it was also necessary that modern thought should have all its freedom" (vol. i, p. 24). Moreover he recognizes the profound personal influence which the publicists exercised on the makers of revolutionary history (vol. i, p. 752).

The French state had been formed by monarchic centralization; feudal and ecclesiastical privileges had been curtailed in the interests of the monarchy, but these privileges still weighed upon the people; the bourgeoisie, increasing in numbers and wealth, arrived at a consciousness of class interests and of the possibilities of development which the old régime hampered; financial difficulties precipitated a crisis; the reigning monarch was incapable of founding a bourgeois state or meeting the crisis; hence a political and social cataclysm which left elements of disorder and discontent upon which political intrigues could operate. Such in brief is M. Jaurès' thesis, and there is nothing in it that is particularly original or socialistic—it is a scholarly appreciation of the movement of historical forces.

These general conclusions on the development of revolutionary forces are supported, however, by a detailed analysis of economic conditions and a minute study of the growth of capitalism, especially in Lyons and Bordeaux. Jaurès describes and even names the leaders and organizers of great colonial and manufacturing enterprises, declaring that this catalogue is an enumeration of the forces which were to make the Revolution.

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We must examine even to the detail of names, the growth of this daring and brilliant bourgeoisie, at once revolutionary and moderate, in whose name Vergniaud will speak. . . . What force, and what sap! How evident it appears that these bold bourgeois, who start and manage great affairs all over the world, will soon determine to conduct on their own account the general affairs of the country. How we feel that they will soon tire of the insolent guardianship of the indolent nobles, of the parasitical existence of an unfruitful clergy, of the wastefulness of the court and the arbitrary conduct of the governmental bureaus [vol. i, pp. 52, 53].

Here Jaurès is writing history—not a drama in which man seems to act automatically and according to approved philosophical forms. He has his hand on the pulse of true historical forces.

As a partial evidence that the bourgeoisie understood the fundamental nature of the conflict they were waging, M. Jaurès devotes many pages to Barnave, whose *Introduction de la Révolution française* displayed a remarkable insight into the economic causes of the struggle. Long before Marx, Barnave had written: "As soon as industry and commerce have entered into the life of a nation and have created a new source of wealth for the support of the working class, a revolution in political institutions begins. A new distribution of wealth produces a new distribution of power" (cited vol. i, p. 101).

With a correct appreciation of the part played by Paris in the Revolution, Jaurès has made a careful study of the economic development and the class conditions in "the capital of the bourgeois Revolution, the center of the great movement" (vol. i, p. 108). His scrutiny fails to reveal any appreciable solidarity of labor or antagonism to the bourgeoisie (vol. i, p. 136). In the rural districts, however, he finds a class conflict growing out of a clearly discernible clash of interests (vol. i, p. 220).

In accord with Champion, our author protests against Taine and all the ideologues who regard the Revolution as proceeding from abstract theories. "The alleged revolutionary declamation is a mere phrase: a world of sufferings and of abuses, and a world of institutions also, is contained and, as it were, heaped up in each of these *cahiers*" (vol. i, p. 155). It was not the extravagances of the theorists that precipitated the crisis. Necker was not a statesman and could not meet the financial situation; Mirabeau failed in his design of making the king chief of the revolution; the reorganization of the municipal system of Paris, though placing the bourgeoisie in power, multiplied points of contact between the government and a people inclined towards democracy; vehemence and continuity of action gave power to the most zealous;

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the Republic was thus forced upon a people wholly unprepared for it, and the revolutionary disorder was precipitated.

Although conforming to the views of most students of the Revolution, Jaurès' treatment of the famous night of August 4 will be extremely illuminating to those who fondly suppose that this was the occasion of a voluntary surrender of privilege and sacrifice of property on grounds of abstract right. The *cahiers* had shown an almost universal demand for fundamental changes in seignorial rights; the revolutionary ferment throughout the country made the situation dangerous; and it is evident that the Assembly was conscious of the danger. The speeches of Vicomte de Noailles and the Duc d' Aiguillon were evidently prepared in advance; they were based on a cool calculation of the situation; they were intended to save what could still be saved by the minimum of concessions. What the nobles surrendered had been already abolished by the peasant uprisings, and all the really important feudal privileges were abrogated only on condition of indemnity to the last penny and of their continuation until payment. This was a condition which the bourgeoisie could accept without endangering any of their landed rights. The importance of the August night must not be underestimated, however; for not only were the peasants shortly afterward freed from heavy burdens, but they ceased to live under the shadow of seignorial power and began to develop a democratic spirit. The process by which the August decree was carried out is fully described.

In his long chapter on the formulation of the organic laws, Jaurès naturally shows greatest interest in the discussion of the democratic measures, though all the laws are treated in detail. Three reasons are assigned for the restricted suffrage adopted by the Constituent Assembly. The bourgeoisie, without having a distinct class fear, felt some uneasiness about admitting the mob to power; in the experience of Turgot in the Limousin they found some reason to suspect that the poor would lean toward the nobles and clergy; and finally, since the philosophers had prepared the revolution, there was little thought of associating the ignorant in the work.

On the basis of a detailed statistical study of the distribution of church property, the social results of the nationalization are enumerated. A large number of people were committed to the support of the Revolution by purchase of the confiscated property; the reverence for the clergy was diminished; the political power of the forces of the old régime was undermined by the removal of the economic basis; rural democracy was reinforced by the increase of independent landholders; conservatism was strengthened by the approximation of the interests of

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the small holders with those of the upper classes; and the productivity of the soil was increased.

To give color of equity to the immense expropriation, the Assembly had to assume the burden of supporting the church, and therefore it became involved in the fundamental problems of ecclesiastical organization. In view of the present ecclesiastical situation in France, Jaurès' views are interesting. He has little patience with the partisans who reproach the Assembly for not settling the church and state problem once for all by separation. At that time concrete forces did not exist to support such action; by centuries of inheritance and training catholicism was woven into the very fibre of French popular life: it required the violent opposition of the clergy to the Revolution, their complicity with the enemies of liberty and the crimes of the Vendée to turn the people from the clergy and Christianity. Jaurès even defends the assumption of the ecclesiastical budget by the state, not as a debt created by the expropriation but as a historical necessity accompanying the nationalization (vol. i, p. 541).

On the subject of the war with Europe Jaurès is critical and illuminating. By a long analysis of documents he arrives at the conclusion that the conflict was largely the result of political machinations. He shows clearly that the declarations of the powers against France were neutralized by the situations in which they were placed at the time, and, what is more important, that the agitators who urged the war were conscious of the weakness of possible combinations of the powers. The king was a vacillating traitor, but the powers were hesitating or impotent. The Legislative Assembly, instead of carefully watching the king and conciliating the powers, did the opposite. Only in war could the revolutionary energy be excited and maintained, intrigues exposed, the king put to the test and forced to submit to the Revolution or be overthrown (vol. ii, pp. 796, 812, 815, 816). Jaurès also devotes considerable attention to the causes of the war between France and England. He maintains that this war could have been avoided if England had rendered French propaganda innocuous by domestic political reforms and if France had renounced revolutionary propaganda and had given England assurance that her interests on the continent and the treaties she had guaranteed would be respected. Here it seems that our author has partially forgotten his economic thesis and has fallen into the habit of those historians who imagine that history can be written from diplomatic notes and parliamentary speeches. For more than one hundred years France and England had been engaged in a determined struggle for colonial and commercial dominion, and the forces which impelled France to war in 1778 were not inactive in 1793.

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While Jaurès' views of politics and war are interesting, they are perhaps less useful than his study of the social and political ideas of Europe in their relation to the Revolution (vol. iii, pp. 442–854). He finds several reasons why Germany was relatively impervious to the revolutionary propaganda. In Germany political divisions impeded collective action; there was no Paris; there was no rich bourgeois class striving for economic and political power; the intellectual classes were conciliated by the liberty offered at petty courts and the patronage bestowed by petty princes; the political intrigues of Prussia and Austria consumed a great deal of energy; and there was no general assembly to form a centre for national activity. There was a great deal of intellectual ferment in Germany and there was much interest in the revolution; but the Germans were mild and incoherent theorists. Wieland, the boldest and clearest of them all, contented himself with the practical program of education under princely patronage (vol. iii, p. 489). Pestalozzi had a true passion for the people, but he did not lift his voice against the arbitrary power of seignors and bailiffs or advocate a democratic organization of justice or popular administration of the commune (vol. iii, p. 500). Under its mystical forms the teaching of Lessing was fundamentally revolutionary; thrown violently into the world, his ideas would have revolutionized philosophical and political systems; but Lessing's principles had no immediate force because his grand doctrine was that all eternity was at his disposal. Kant extended scientific criticism to political institutions, but it was only from the governments themselves that he expected reforms. As for Gœthe,

> In the soul of Faust there is no trace of the great emotion for revolution and for humanity. When the old and weary scholar is about to drink the cup of death, he is held back for an instant by the pious and pure song of the simple souls: "Christ is arisen." The bells that chime in his ears ring the song of the past; none of them rings the song of the future, the universal revolutionary liberation of men (vol. iii, p. 532).

Jaurès devotes more than two hundred pages to a study of English conditions. His comparison of Smith and the physiocrats is striking and valuable. The doctrines of the latter were a disconcerting mixture of progressive and retrograde ideas; they were the theories of a people not yet sure of its destiny, a people which did not know how to reconcile with its traditional agricultural power the new forces of production and multiform capitalism which were rising and spreading within the social structure. On the other hand the principles of Smith responded to the conviction of a people ripe for the factory system and the commercial

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mastery of the markets of the world. Smith fully recognized the importance of agriculture but he wished it to be an aid, not a hindrance, to industry (vol. iii, p. 659). After comparing the English and French land systems, Jaurès sums up in a remarkable page the contrast between the economic, social and political conditions in the two countries (vol. iii, pp. 726, 727). The policy of Pitt is carefully examined, and that great statesman is characterized as whig reformer, but enemy of democracy, and *par excellence* defender of capitalism and commerce. There are sections on the radicals in England, Paine, Mackintosh, Cowper, Wordsworth and Robert Burns, and a critical appreciation of the controversy which raged around Burke's *Reflections*. Jaurès defends France against Burke's charge of being the victim of chimerical abstractions. He maintains that French history is also founded on realities; but, having no institutional traditions to fall back on, the French used natural rights as a justification for revolutionary notions. Jaurès does not mention what is now established beyond a question, that the traditional liberal interpretation of Magna Carta as a democratic document is utterly unfounded, and that the famous charter of liberties was really a reactionary feudal measure designed to bolster up the interests of the nobility.[1] Jaurès wonders at Burke's paucity of information concerning the real state of France (vol. iii, p. 736) and also at his use of wholly *ex parte* statements.

The fourth volume opens with the trial of the king and closes with the 9th Thermidor. In addition to the full discussion of political events there is a long and valuable chapter on the social theories of the Convention and the revolutionary government. No time is spent in discussing the legality of the action of the Convention in executing the king. France was in a revolutionary state; the suspension of the king and his incarceration were revolutionary acts; the Convention was a revolutionary body, since it was not summoned according to the provisions of the constitution of 1791. The foreign policy and the military organization, the development of factions and their contests from the death of the king to the fall of the Gironde are discussed in some five hundred pages. Jaurès does not seek to explain the complexity of domestic intrigues during the Terror on grounds of class antagonism. Between the social theories of the Gironde and the Mountain he finds no profound divergence; the pretensions of the former as defender of property are attributable to political tactics (vol. iv, p. 1448). It is true that one

[1] See Edward Jenks, in *The Independent Review*, November, 1904, and the qualified views of McKechnie, Magna Carta, 1905.

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party was supported by bourgeois interests and the other by the people; but if the Girondists had believed that they could have maintained their supremacy by consenting to the forced and progressive loan and to the *maximum*, they would not have hesitated, as they had no inflexible economic principles. A study of the social theories of Robespierre demonstrates that the prince of revolutionists advocated nothing that was fundamentally opposed to the bourgeois property concept (vol. iv, p. 1565). Robespierre saw that he needed the political support of the proletariat against the Girondists, whose traitorous inertia would have lost the Revolution. He saw in process of formation discontented parties which demanded for the people not only political rights but also certainty of livelihood, and he sought a modification of his theory of property which would attract the support of those who voiced this demand, but he never dreamed of its future developments (vol. iv, p. 1568). Jaurès believes that the law against monopoly was useful at a time when France was practically in a state of siege and that the extensive commercial publicity and the forced circulation of paper money may have prevented disaster,[1] although these measures could not remedy the price-crisis, owing to the scarcity of grain and the decline in the value of the assignats. Like the tension of the Terror and the dictatorship of the Committee of Public Safety, these economic measures were abnormal; they were incompatible with a society founded on individual property and private production; the strong pressure of economic forces prevented an indefinite extension of the disorganization which weakened public credit and rendered commerce and industry precarious. The revolutionary measures, in other words, had no economic foundation, and France was destined to establish a political system that could give free play to the economic forces released from feudalism, namely, an orderly bourgeois state.

M. Deville takes up the story after the fall of Robespierre and writes the history of the reaction and the Directory. There is little in this period that lends itself to economic treatment. Before the 9th Thermidor the leaders of the Revolution had transformed social relations and adapted them to the economic necessities of their epoch, and a republic transcending the needs of the bourgeoisie—a republic of all the people—was bound to disappear. M. Deville therefore has political and military events to relate, but he also writes sections on Babeuf, finan-

[1] Vol. iv, p, 1783: "La loi du maximum, en même temps qu' elle restituait le crédit des assignats et servait par là merveilleusement le gouvernement révolutionnaire, l' État acheteur, a prévenu les paniques et empêché l' extrême tension des rapports économiques d'aboutir çà et là à des violentes ruptures d' équilibre."

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cial legislation, science, commerce and industry. The master idea of French diplomacy was the contest with England—a conflict inevitable so long as France was under the "disastrous influence of the false principle of natural frontiers" (vol. v, p. 380). England never could consent to the annexation of Belgium; and the English commercial power could be broken only by a continental system carried out not by aggrandizement but by arrangements profitable to all parties concerned. This conflict with England is the key to the military situation. Domestic politics consisted of contests between ambitious factions which could not maintain order, and the coup d' état of 1799 was consummated "to the great joy of the speculators" (vol. v, p. 592).

Such are the leading ideas of the new history of the Revolution so far as they can be reproduced within the limits of a review. The work, in spite of its ominous title and flaming red covers, is not a violent party polemic, but a monumental contribution to the literature dealing with the Revolution. Its interest lies not so much in its originality as in its acceptance of the views of the most recent scholars on the main points. We do not have to accept socialism in order to accept many of the conclusions of MM. Jaurès and Deville; indeed Professor Seligman has demonstrated that socialism and the economic interpretation of history are entirely different propositions. The story is remarkably impartial; and, indeed, there is no reason why an intelligent socialist should not be as impartial as a tory or whig. One who dissents from the views of both tory and liberal may write as scientifically as one who maintains either side. The most scholarly and definitive essay on the canon law in England is by a man who dissents from all churches.

However, the serious student has reason to find fault with Jaurès' arrangement of his material and his use of documents. There are chapters from four to six hundred pages long without any break in the text to indicate transitions. There is no index, and the tables of contents are so meagre as to be almost useless. Printed and manuscript materials are extensively used; long and valuable quotations are made from rare and curious works; but there are no references to the volumes, editions or pages except in Deville's part. There is no way of telling how thoroughly evidence has been sifted or of verifying statements. There are many misprints and mistakes in dates. If Jaurès would recast his material, document it thoroughly, treat related topics consecutively, break the chapters up into sections and provide a useful table of contents, scholars would find the value of the work greatly increased.

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REVIEWS

France in America, 1497–1763. By REUBEN GOLD THWAITES (*American Nation*, Volume VII). New York, Harper & Brothers, 1905.—xxi, 320 pp.

The American Revolution, 1776–1783. By CLAUDE HALSTEAD VAN TYNE (*American Nation*, Volume IX). New York, Harper & Brothers, 1905.—xix, 369 pp.

The Confederation and the Constitution, 1783–1789. By ANDREW CUNNINGHAM MCLAUGHLIN (*American Nation*, Volume X). New York, Harper & Brothers, 1905.—xix, 348 pp.

The Formation and Development of the Constitution. By THOMAS FRANCIS MORAN (*History of North America*, Volume IX). Philadelphia, George Barrie & Sons, 1905.—xix, 504 pp.

One advantage of the present fad for serial histories is that it makes necessary the study of certain periods and phases which have hitherto been neglected or else treated in detail without much regard to the general historical perspective. Professor McLaughlin, for example, has taken advantage of his opportunity to produce a sane, scholarly, well-written work, which, if not as interesting as Fiske's *Critical Period*, is of far more value to the student. Professor Van Tyne throws very little new light on the military history of the Revolution, but his special study of loyalism has enabled him to emphasize the civil war aspect of the struggle. The volumes by Mr. Thwaites and Professor Moran are disappointing. It is evident that they had too much other work on hand or were hurried by inconsiderate publishers. Both are careless in style, in statement of facts and in arrangement of material.

Mr. Thwaites has undoubtedly tried to cover too much ground in one small volume, but it is a question whether he has made the best use of the space allotted to him. The treatment of the northwest is good, and its value is enhanced by several useful maps. That of Canada and Acadia leaves an impression that something is lacking, while that of the lower Mississippi and Gulf regions is decidedly inadequate. He uses Hamilton's *Colonial Mobile*, but makes no reference to his *Colonization of the South*, either in the footnotes or in the bibliographical

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chapter. Possibly the book did not appear in time. We might reasonably have expected from Mr. Thwaites a special chapter on French ecclesiastical policy, a sympathetic treatment of the Jesuits which would serve as an antidote to Parkman, but the subject is almost entirely neglected. Admirers of Parkman know that the field is unusually rich in material for emphasizing the personal equation, yet Champlain and Bienville are mere automatons and Frontenac is mentioned only once. However, such omissions are possibly unavoidable in a book of three hundred pages, only one-third of which is devoted to the period before 1743. The latter part is better written and Wolfe and Montcalm receive rather more consideration. In view of the increasing popularity of Captain Mahan's ideas of sea power, it is interesting to note that Mr. Thwaites gives as much credit to Warren at Louisburg and to Saunders at Quebec as he does to Pepperrell and Wolfe. Several mistakes may be noted—for the most part evidently the result of haste and carelessness. To refer to the court of Versailles in the days of Henry IV is anachronistic, to say the least (p. 15). The griffins were not on La Salle's coat of arms, but on that of Frontenac (p. 61). The government of France did not come under the "practical control of the benign Cardinal Fleury" immediately after the death of Louis XIV (p. 89). The War of the Austrian Succession did not begin in 1744, and Spain, France, Bavaria, Saxony and Prussia did not contend "for a division of the empire," but for a division of the Hapsburg dominions (p. 105), which is quite a different matter. The prime minister in 1746 was not the Duke of Newcastle, but his brother Henry Pelham (p. 119).

In point of style Professor Van Tyne's book is easily the best of the four, while in accuracy of details and in arrangement of material it is superior to those of Mr. Thwaites and Professor Moran. Professor Van Tyne's account of military affairs is vigorous and dramatic. Although he regards Washington's generalship in the battle of Long Island as "unwise and unskilful" (pp. 107–108), he evidently does not agree with Mr. Charles Francis Adams that his escape was purely a matter of luck or that the attempt to hold New York was a mistake *ab initio* (*Amer. Hist. Review*, vol. i, p. 650). In the light of Professor Johnston's researches the reviewer was curious to note where Professor Van Tyne would locate the battle of Harlem Heights and was surprised to find that he ignored it entirely. At the time implied in the text, September, 1776, the American troops were not "strongly intrenched beyond the Haerlem" (p. 118), but were still on Manhattan island. A few other minor mistakes have been noticed. The House of Commons in 1765

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contained representatives not merely from "certain ancient counties," but from all the counties of England (p. 12). New Englanders would hardly agree that the extension of the province of Quebec to the Ohio river affected the territorial integrity of Virginia alone (p. 23). In stating that "Massachusetts could afford to be extreme and revolutionary because her charter was gone, but Pennsylvania and Maryland and the southern colonies had something to lose, and naturally held back" (p. 76) can Professor Van Tyne mean to imply that the colonies south of Maryland had charters in 1776? Is it true that the British ministry never seriously entertained the idea of sending a bishop to America (p. 112)? The author is at times careless in his references, as when he quotes Greene's *Colonial Commonwealth* for *Provincial America* (p. 7), Morley's *Burke*, without indicating whether he means the volume in the English Men of Letters series or the earlier study (p. 17), and McCrady's *South Carolina in the Revolution*, without mentioning the volume (pp. 293, 295). The critical essay on authorities is one of the most exhaustive that has yet appeared in the series. Cobbett's *Parliamentary History*, however, should be mentioned in any list of sources bearing upon the work of Parliament during the Revolution (p. 336). Ford's edition of John Dickinson's writings is of course incomplete, only one volume having appeared instead of three (p. 337).

In his chapter on "State Sovereignty and Confederation," Professor Van Tyne argues that the nation was not created by *fiat*, but that in the course of nature it "slowly evolved from the mere protoplasm of the revolutionary time" (p. 176). No one in 1776 imagined that a sovereign nation had come into existence. Patrick Henry's rhetorical declaration in the first Continental Congress that "all America is thrown into one mass" was merely the utterance of a demagogue, and it was belied by his whole subsequent career. Local selfishness, the desire to advance the interests of Virginia at the expense of the small states, was the motive which impelled him to make the speech.

South Carolina, in two constitutions adopted during the war, provided her government with those peculiar features of sovereignty, the right of making war and entering into treaties. Virginia ratified the treaty with France, and she, as well as other states, sent her own agents to Europe to contract a loan and get arms and ships [p. 179].

This may be contrasted with the following from Professor Moran's book:

. . . as a matter of fact, the states were never sovereign in the true sense

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of that term. . . . . There was a union before the colonies became free and independent states. The union, then, was older than the states, and the idea that the states were ceding something from their absolute sovereignty to make a union was an entirely mistaken conception. No American state had ever figured before the world as a sovereign power [pp. 13–14].

And yet in another connection Professor Moran says: "The people accepted the idea of an indissoluble union in 1865, but they would not have done so in 1787" (p. 126). In emphasizing the old Webster-Story argument based on the preamble of the constitution Professor Moran fails to call attention to the fact that in its original form, adopted unanimously by the convention, the preamble mentioned every state by name, and that it was changed by the committee on style probably for the very good reason that some of the states might refuse to ratify. According to Professor Van Tyne the development of the philosophical theory of national sovereignty was simply the result of the later sectional controversy (p. 177).

If some of the volumes in the first two groups of the Hart series fall below what the editor had led us to expect, Professor McLaughlin's book goes far towards tempering our disappointment. It requires courage to devote eleven chapters (183 pp.) to the period between 1781 and 1787 and only seven (133 pp.) to the construction and ratification of the constitution. The excellent treatment of commercial and financial conditions, diplomatic relations, paper money, and Shay's rebellion, however, would alone justify this apportionment, not to mention the three admirable chapters entitled, "The Problem of Imperial Organization," "Founding a Colonial System" and "Founding of New Commonwealths." Jefferson's share in originating the anti-slavery clause of the Northwest Ordinance might be emphasized more fully. His ordinance of 1784, to be sure, applied to the whole of the western country and the slavery restriction clause in the original draft was not to go into force until after the year 1800, but it contained the principle of exclusion which was worked out subsequently by Pickering, King and Dane. Professor McLaughlin believes that the Pinckney plan, which Moran, by the way, ignores entirely, "had considerable influence in determining the contents of the constitution" (pp. 194–195). Curiously enough, neither he nor Professor Farrand seem to have noticed Pinckney's contribution to the so-called three-fifths compromise. The two ideas in the compromise are of course taxation and representation. The application of the three-fifths rule to taxation was first suggested in an amendment to the Articles of Confederation

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proposed in 1783. On May 21, 1787, four days before the convention was organized, George Read of Delaware wrote to Dickinson stating that he had seen the draft of a plan for a federal system. There was to be a legislature of two houses, in one of which, the house of delegates, the membership was to be proportional to the number of white inhabitants and three-fifths of all others. (*Annual Report of the Amer. Hist. Assoc.*, 1902, vol. i, pp. 119–120). Professor Jameson's belief that this letter referred to the Pinckney plan was verified by the subsequent discovery of an outline of the plan itself among the James Wilson papers in the library of the Historical Society of Pennsylvania, published in the *American Historical Review* for July, 1904. Professor McLaughlin also fails to call attention to the fact that on June 11 the convention in committee of the whole adopted by a vote of nine states to two a motion introduced by Wilson and seconded by Pinckney providing for the three-fifths basis of representation (*Madison Papers*, Hunt Edition, vol. iii, pp. 143–144). All that remained to be done in open convention was to associate the ideas of taxation and representation and to limit the rule to direct taxes. In its final form it was a compromise, but to call it one of the "three great compromises" is an absurdity which Professor McLaughlin prudently avoids.

Professor Moran's volume covers the period from the close of the Revolution to the beginning of Madison's administration (1781–1809). His work is very uneven. The treatment of the years between 1781 and 1787 is especially weak, while the discussion of the convention is interesting and suggestive. Chapter viii on "The Origins of the Constitution" is perhaps the best in the book. The author lays especial emphasis on the undoubted fact that the idea of the presidential electoral college was derived from the Maryland method of electing state senators (pp. 221–222). It is unfortunate that an otherwise excellent work should be so marred by defects of style and by carelessness in matters of detail. Franklin, of course, did not introduce the unicameral system into the Pennsylvania constitution (pp. 4–5). It was based on the old colonial government. Pennsylvania did not provide in 1780 "that the children of slaves born in the future should be free" (p. 44), but that they should eventually be free. New York was not the only state at the close of the Revolution in which free negroes exercised the right of franchise (p. 44). Massachusetts, New Hampshire, New Jersey, Pennsylvania and North Carolina might be added to the list. The statement (p. 145) that "it was decided that the executive should be chosen by the national legislature to serve for a term of seven years" scarcely warrants the conclusion that "the Convention

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thus seemed emphatic in its favor of election by the state legislatures, until the electoral plan came up for serious consideration." Congress did not grant authority to the president in 1789 to remove heads of executive departments (p. 240). It recognized the authority as already existing, as constitutional in character. The reviewer questions whether Frederick the Great was "one of the best friends in Europe of the American cause" (p. 11) and he doubts that France ever insisted upon the enforcement of the rule of 1756 (p. 276). John Adams was vice-president for eight years instead of four (p. 308). If the Republicans imported William Cobbett (p. 341) it was a very magnanimous act inasmuch as he showed exceptional zeal in supporting the Federalists. The Alien Act could not affect William Duane because he was born in New York (p. 341). France ceded Louisiana to Spain in 1762, not 1763 (p. 399). More serious blunders are the reference to "the usurpations of Napoleon Bonaparte" in 1793 (p. 277) and the failure to grasp the significance of the case of Marbury *v.* Madison. Chief Justice Marshall certainly did not decline "to take jurisdiction on the ground that the judiciary could not interfere to control the executive" (p. 390).

W. ROY SMITH.

BRYN MAWR COLLEGE.

Provincial America, 1690–1740. By EVARTS BOUTELL GREENE (*American Nation*, Volume VI). New York, Harper & Brothers, 1905.—xvii, 356 pp.

Preliminaries of the Revolution. By GEORGE ELLIOT HOWARD (*American Nation*, Volume VIII). New York, Harper & Brothers, 1905.—xv, 359 pp.

The period covered by Greene's volume has never been adequately studied as a whole, and the monographic literature is most incomplete and only in very small part reliable. This is recognized, though not fully, by the author himself, for he says, in the preface, that "it is hardly possible even now to write a history which can be called in any sense definitive; certainly, no such claim is made for the present work." That the seventeenth century has been carefully, though not completely, studied, while the first half of the eighteenth century has been neglected, is partly due to the fascination exercised by the study of origins even on those who do not believe, with Fustel de Coulanges, that this is the main purpose of history. In part this neglect is also explained by the fact that the bulk of the material for the study of this period is in manuscript, and has in large part remained undisturbed

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since it was filed away in the English archives. Greene says that much of this has been printed, but while that portion is undeniably bulky, yet it bears a small proportion to the whole. The mass of manuscript material available and easily accessible in England is enormous, and until this material has been carefully worked over, and the result of this work embodied in detailed monographs, it is impossible to write anything but a fragmentary and tentative account of the period. Under existing conditions this was bound to be the result of an attempt, such as Greene's, based wholly on the published records and on the inadequate monographic literature.

The reliance on incomplete material has led to vague and tentative statements where precise information is available. Thus, for instance, Greene says (p. 287) that there are no accurate statistics as to the trade of the continental colonies, and as a result he uses only partial statistics confined to a few years and arrives at misleading conclusions. Yet despite the burning of the bulk of the English customs-papers, very full statistics are available, not only in manuscript form, but in print. Sir Charles Whitworth's *State of the Trade of England* (London, 1776) gives accounts of the imports and exports between England and the colonies year by year from 1697 on. Similarly Greene says (p. 290) that it is extremely difficult to estimate even approximately the intercolonial coasting trade. This is unquestionably true, but it is not for want of material, as is seemingly implied. Abundant material is available in various forms, but especially in the naval office lists, whose only drawback is their great wealth of detail. Then a tentative statement is made about the condition of the colonial iron industry in 1750, whereas exact data are available in the governors' certificates. The account of the rise of the colonial treasurer (pp. 76, 77) is incomplete, since it fails to show how in several of the colonies, but especially in Virginia, a dual financial system existed, one controlled directly by the crown, the other by the colony. The statistics of slavery (p. 238) are misleading, since no attempt is made to differentiate between the continental colonies and those in the West Indies, and the estimate of the slave population is not in accordance with the available evidence. Similarly the entire description of the Board of Trade, both in regard to its efficiency and its advisers (pp. 169–172), is vague and indefinite where exact and precise statements are possible, as the records of its activity are most complete. In fact the entire account of the British administrative system and of imperial policy is incomplete and hence misleading, partly because the system has not been studied as a working institution in its records, and partly because no attention is paid to

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any but the colonies that were to form the United States. Thus the account of the movement towards greater imperial control from 1660 on would become clearer and its success could be better estimated if its results in the Bermudas, in Barbados, in the Leeward Islands and in Jamaica were studied. There is for the same reason a failure to appreciate the spirit of English policy. Thus Greene does not recognize that there was an imperial interest which might conflict with the immediate interests of England or Scotland, or of any of the colonies, and that British colonial policy on the whole was based on this imperial interest, and not on that of Great Britain or of any colony or any group of colonies. It was in pursuance of this imperial policy that the molasses act was passed, not to benefit one group of colonies at the expense of another, but to strengthen the British Empire in its long-drawn-out duel with France. Oglethorpe's attitude in the controversy leading up to the passage of this measure (p. 252) is not quite correctly represented.

Despite the claim of this series, that it is a history written from the original sources, its main purpose seems to be to summarize the already acquired knowledge, not to add to it. The faults of this volume arise in the main from the existing defective state of that knowledge, and are not attributable to the author's methods in using the published records and the monographic literature. Greene has in general refrained from making sweeping generalizations founded on incomplete facts, and he is usually moderate in his judgments. Yet he has adopted the "American viewpoint," and there is a tendency, though not a marked one, to magnify the failings of the mother-country and to minimize those of the colonies. This is especially patent in the discussion of the old colonial system, where no account is given of the imperial fiscal system by which many colonial products were given preferential treatment in the British market. Then, from the reasons assigned for disallowing colonial laws in England (pp. 52, 53), no one would infer that a large number of the colonial laws disallowed were laws aimed directly at the interests of other colonies, inequitable debtor laws, laws depreciating the standard of value and thus scaling down debts, and laws discriminating against other fellow-subjects residing in Great Britain or in another colony. The general statement (p. 173) about the character of the royal governors does them scant justice. On the other hand one of the chief evils of the British administrative system which retained its vitality in spite of the opposition of the Board of Trade—the residence of minor officials in England and the delegation of their duties, in return for part of the profits of their offices, to deputies resident in the colonies—is not mentioned.

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Naturally some errors, in part due to carelessness, appear in a work covering so long a period. Such an error is the statement (p. 36) that ship-timber was an enumerated commodity. Then the statement regarding the effect of the French military operations against Newfoundland in 1696 (pp. 127, 133) is inaccurate in so far as it implies that the New England fisheries were in Newfoundland. With the exception of the whale fishery, they were virtually confined, during the entire period under review, to the coasts of Nova Scotia and New England. The statement regarding the status of Scotsmen and Irishmen (p. 4) in the colonies should be modified.

Howard's volume is devoted primarily to events between the years 1763 and 1775, and to a discussion of the causes of the American Revolution. He recognizes that the causes of the revolution were remote, antedating 1763, and he also recognizes that unconsciously the colonists were for a long time preparing for independence. Its causes, he says, were not social, but political and economic. The primary cause he finds in the old colonial system, as embodied in the laws of trade and navigation. This system, he says, "was wrong in principle and degrading in motive," and hence necessarily the cause of the Revolution (p. 65). It may be admitted, purely for the sake of argument, that this indictment of the old colonial system is justified by the standards of the twentieth century, but in order to prove his thesis Howard must show that it was the view of the eighteenth century prior to the revolutionary era. Granting that the system bore hard on the colonies, it was only a recognition of this fact that would produce political results. Of such a recognition there is no sign. A careful search of the records shows that there was no objection on the part of the colonies to the system as a whole, though there were complaints against isolated features, which were then carefully considered and usually changed by Parliament. On the other hand Francis Yonge, one of the leaders in the South Carolina revolution of 1719, while agent for that colony, suggested to the Board of Trade a much more restrictive system than that in force (Board of Trade, South Carolina 1, A. 36), and Bollan, as late as 1755, while agent of Massachusetts, wrote for the Board of Trade a detailed dissertation on the legal defects in the laws of trade and navigation in order that they might be remedied and the law better enforced (Board of Trade, Massachusetts 74, Hh. 52). Burke's conclusion, in his speech on American Taxation, that the general attitude of the colonies before 1764 was one of acquiescence, is supported by the available evidence.

The comparatively detailed account of the old colonial system is not

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accurate. It did not give English manufacturers a monopoly of the colonial market, as Howard maintains (p. 51), nor is it correct to describe it as "class legislation pure and simple" for the benefit of the English merchant and manufacturer. The importance of the English preferential system by which colonial products were encouraged by direct and indirect bounties is overlooked. Certainly the farmers in England whose tobacco was destroyed by the military forces during the reign of Charles II, did not look upon the colonial system as class legislation in favor of England, nor was it so regarded by the English tax-payers, who at one time paid in bounties on colonial naval stores a sum not much less than that which the stamp act was expected to produce in the continental colonies. In view of Howard's thesis that the old colonial system, as it existed before the revolutionary era, was the primary cause of the Revolution, it is surprising that no account is given of the fundamental changes in that system made by numerous statutes from 1764 on. This subject, which has never been adequately investigated, deserves treatment at Howard's hands not only in view of his thesis, but also for the reason that the system described in his book did not prevail during the period therein treated.

In order to understand the change in English policy after 1763 and also the changed attitude of the colonies towards the mother-country, some account of the policy of imperial defence and its integral relation to the old colonial system is necessary. The peace of 1763, by removing the French danger, removed the chief utilitarian bond attaching the continental colonies to the mother-country. At the same time the vast area of the territory yielded and the increased importance of Indian relations necessitated a great increase in the expenses of administration. It must also be noted that it is impossible to understand English policy unless some account is given of the trade of the colonies with the enemy during the war. This subject also has never been investigated, although there is a large mass of papers in the English records bearing on it. This trade not only seriously hampered British naval operations in the West Indies, but also raised the price of provisions on the continent to such a degree that Amherst had difficulty in provisioning his army and had even to import from Europe for this purpose. One of the means adopted for stopping this illegal trade was the enforcement during the war of the Molasses Act of 1733; and this enforcement directly led to the difficulties in Massachusetts about the "writs of assistance." This trade in turn led directly to the orders for the stricter enforcement of the laws of trade, and to the changes in policy inaugurated by the law of 1764. Again, some account should be given of the

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grudging support afforded by the colonies as a whole during the Seven Years' War and the subsequent Indian conspiracy. It was this that led to the proposals of Dinwiddie, Shirley, Braddock and others for taxing the colonies in 1755. These subjects are either ignored or inadequately treated by Howard. Further, the activity of the English government after 1763 in its efforts to secure greater imperial control is not studied in all its manifestations. As it was this activity, at a time when the colonies least needed the mother-country's protection, that led directly to the ultimate separation, these omissions are important. The policy towards the Indians and the efforts to regulate the Indian trade should be, but are not discussed. Then something should be said of the attempts to collect the Greenwich Hospital dues in America. This was unquestionably a source of friction. Thus in 1763 the principal deputy-receiver of these dues in America wrote to England, "great clamours have arisen against me for the measures I am taking for a more exact Collection of the Duty" (Admiralty Papers, Greenwich Hospital, Misc. Various, 131.)

Howard belongs to that group of writers who fail to recognize that the desire of a community for complete self-government may be independent of the question whether or not the outside control is for the benefit of the dependent community. He does not realize that the mother-country and the colonies were each, from the respective standpoint adopted, pursuing legitimate ends, and that the Revolution was due as much to a misunderstanding of English aims by the colonists as to English misunderstanding of colonial conditions. Hence his attitude is strongly partisan, and he uncritically adopts American statements and ignores or belittles those from English sources. This leads to a distinctly distorted account of English policy. Thus he discusses in detail the objections of the clergy to the Virginia "twopenny act" of 1758, and entirely fails to realize that the most fundamental imperial relations were involved in this act. No mention is made of the fact that this law directly affected English merchants trading to Virginia by making their outstanding contracts in the colony null and void, and that it was their complaints as much as those of the clergy which led to the disallowance of the law in England. (Board of Trade, Virginia 26, X 67.) It certainly misrepresents Great Britain's attitude to say, in connection with this disallowance, that "a royal prerogative which absolutely denied to the colonists the privilege of self-help through legislation even of temporary force was fast becoming intolerable." Then it is certainly not justifiable to contrast the morals of the Medmenham Abbey set in England with those of John Adams, as if either were typical of

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the respective communities. In his treatment of the slave-trade Howard also shows a strong bias. In view of Great Britain's attitude toward slavery in Georgia, where the colonists forced the mother-country to sanction the institution, the general statement that attempts to restrain slavery were frowned upon in Great Britain should be modified; and there is no justification for the statement regarding the Virginians (p. 90) that "they objected to the exercise of the prerogative, not primarily because the king was forcing upon them a traffic which they abhorred, but because they believed their welfare was being sacrificed in the interest of British merchants." The attitude of England and of the colonies towards slavery is not correctly represented, though there is abundant material from which the truth can be ascertained. The governors were instructed not to agree to laws imposing duties on negroes imported, unless these duties were made payable by the purchasers and not by the importers. The instruction arose from a complaint of the English slave-traders that on account of duties made payable by the importer an excessive amount of capital was required in the trade. Some colonial laws were repealed in England because they violated this instruction, and others because the duty was so high that the English government feared it would raise the cost of production in the colonies and ultimately hurt them in competition with the foreign colonies. Yet in general, with but slight interruptions, all the plantation colonies on the continent levied duties on the importation of negroes with the full knowledge and consent of the mother-country. These duties were levied primarily for revenue purposes, and also partly because the great increase in the slave population, it was feared, portended a slave insurrection like the rather formidable and protracted one in Jamaica. There was, however, another reason for the enactment of such laws—namely, to protect the colonial industry of breeding slaves. In 1760 the Virginia assembly reduced the import duty on slaves; the burgesses passed the law by only one vote. The contest on this occasion, as Fauquier informed the Board of Trade, was

> between the old Settlers who have bred great Quantity of Slaves and w^d^ make a Monopoly of them by a Duty w^ch^ they hoped would amount to a prohibition; and the rising Generation who want Slaves, and don't care to pay the Monopolists for them at the price they have lately been w^ch^ was exceedingly high [Board of Trade, Virginia 27, Y 8.]

The Virginia law of 1760 distinctly says that the duties were reduced because they were found

> very burthensome to the fair purchaser, a great disadvantage to the settle-

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ment and improvement of the lands in this colony, introductive of many frauds, and not to answer the end thereby intended, inasmuch as the same prevents the importation of slaves, and thereby lessens the fund arising from the duties upon slaves [Hening, vii, 357, chapter i, 1760.]

The following year Virginia still further reduced these duties (Hening vii, 383, chapter i, 1761). In spite of these facts Howard says (p. 89) that "in 1761 several acts of the Virginia legislature, raising the duty on imported slaves, were vetoed by the crown;" and it is in connection with these imaginary disallowances that he makes the above-quoted unjustifiable remarks about Virginia's objection to the royal prerogatives, Virginia's abhorrence for the slave-trade and the sacrifice of Virginia's interests to those of British merchants. It is hardly possible to conceive of a more complete misrepresentation of the facts.

The work of Howard is of an entirely different character from that of Greene. Whereas the latter relies to a great extent on the published records, this work is mainly based on the monographic literature and on general treatises, such as those of Bancroft, Lecky and Trevelyan. To a marked degree it is composed of duly acknowledged excerpts from such works, and hence the conclusions arrived at are not very convincing. There are also marked signs of haste, and consequently a number of careless statements. Thus Howard says "already, in 1730, Montesquieu had prophesied that because of the laws of navigation and trade England would be the first nation abandoned by her colonies" (p. 18). This tends to support Howard's thesis as to the effect of the old colonial system, and is surprising in view of Montesquieu's approval of the principles of that system (*cf.* Jaubert, *Montesquieu Économiste*, p. 95). What Montesquieu actually said is an entirely different thing. In one of his detached remarks in his *Notes sur l' Angleterre* (ed. 1827, vol. vi, p. 339) he says: "Je ne sais pas ce qui arrivera de tant d' habitans que l'on envoie d' Europe et d' Afrique dans les Indes occidentales; mais je crois que si quelque nation est abandonnée de ses colonies cela commencera par la nation anglaise." Then a letter is quoted (p. 31) as written by George Grenville to show the writer's "naive and unblushing methods of corruption." It would be an important reversal of general opinion to show this, for Burke's estimate, that Grenville was a public-spirited, hard-working statesman whose ambition was "to raise himself, not by the low pimping politicks of a court, but to win his way to power through the laborious gradations of publick service" (Speech on American Taxation) is accepted even by Bancroft, who calls him "a model of integrity" (ten volume edition, vol. v, p. 99), and by all other students of the period. The letter

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quoted turns out to be written by Henry Fox (Walpole, *Memoirs of George III*, vol. i, p. 169). On page 23 Howard tells us that the Irish linen industry was discouraged by England. As a matter of fact Great Britain encouraged the industry by a system of bounties under which the quantity of Irish linens exported from Great Britain entitled to such bounties increased from 40,907 yards in 1743 to 2,588,564 yards in 1763, and the total number of yards exported from Ireland increased in the same years from 6,058,041 to 16,013,105 (Murray, *Commercial Relations of England and Ireland*, pp. 128–130). Then although Howard mentions Bancroft's disregard of the ethics of quotation marks, he quotes from him an extract of a despatch from Shirley without looking up the original, which is in the America and West Indies series, bundle 82. Unfortunately Bancroft's extract omits some significant words, and besides it is given without the context, with the result that Shirley is misrepresented. "Removed" for "renewed" on page 135, first line, is obviously a misprint. The statement (p. 41) as to the number of slaves imported into the continental colonies, 1733 to 1766, is very inaccurate, and in addition no appreciation is shown of the fact that the slave trade to the West Indian colonies was far larger than to those on the continent. The statement that up to 1761 "the provincial judiciary had in fact enjoyed the same security of tenure" as in England (p. 85) is diametrically opposed to the facts. The colonial judges in general were dependent on the crown, and also on the assemblies for their salaries, and there were instances of undue influence from both sides.

Though there is a distinct difference in the quality of these two books, they both emphasize the necessity of a broader and more catholic view in treating the colonial period of American history. Even more than this do they emphasize the necessity of a thorough study of the manuscript records in England. The neglect of these indispensable sources by American scholars is in part due to their location, though this difficulty is by no means an insuperable one. It is, however, a disadvantage which is now gradually being overcome by such publications as the Georgia records, but which can be completely removed only when an exact copy of this huge mass of material is lodged in Washington. Of this work, fortunately, a beginning has been made, but the task is of such magnitude and importance that it requires and deserves the support of the national government.

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Colonial Administration. By PAUL S. REINSCH, Professor of Political Science in the University of Wisconsin. New York, The Macmillan Company, 1905.—viii, 422 pp.

Territories and Dependencies of the United States, Their Government and Administration. By WILLIAM FRANKLIN WILLOUGHBY, Treasurer of Porto Rico. New York, The Century Company, 1905. —xi, 334 pp.

Dr. Reinsch's book is a companion volume to his work on *Colonial Government* published in 1902 as a part of "The Citizen's Library." The title *Colonial Administration* which he has given to the present volume is somewhat misleading, for the book is devoted to colonial policy. It has hardly a word to say as to governmental or administrative institutions, which were treated with a considerable degree of fulness in the former work. The present volume is devoted to a consideration, largely from the view-point of the dependency, of the policy which should be followed by the mother country towards its colonial possessions. There are thus chapters devoted to education, finance, currency and banking, commerce, communication, agricultural and industrial development, land policy, the labor question and defence and police.

The treatment of these special questions is preceded by an admirable introductory chapter, a part of which was read before the International Congress of Arts and Sciences at St. Louis in 1904. In this chapter are to be found the author's conclusions as to the general policy which colonizing nations should follow relative to their colonial possessions. These conclusions, it may be added, are predicated, as indeed is the whole book, upon the hypothesis that the colonial possessions under consideration are to be found in tropical regions, or at any rate in regions which are of such a character as not to invite a large emigration to them from the mother country. In other words, Dr. Reinsch's book is not so much a discussion of the administration of colonies in general as an attempt to contribute to the solution of the questions which present themselves to colonizing nations at the present day. Since almost all the occupation or settlement colonies either have become independent of the mother country or have been endowed with practical autonomy, these problems are to be found only in connection with colonies occupied by an alien race and one which, by reason of its backwardness in development, has been subjected to a régime of political dependence.

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The main idea which Dr. Reinsch endeavors to emphasize is one which is often lost sight of, particularly by those who regard with seriousness the white man's burden. This idea is that it is not only hopeless but cruel to attempt to impose our civilization and our ethical notions upon peoples whose economic, social and industrial conditions are largely different from our own. Dr. Reinsch points out that, if we truly believe, as most of us do, that our civilization is higher than is that of those whom fortune, duty or destiny has made our wards, and if, because of a belief in the brotherhood of man, we take our duties towards our less fortunate brothers seriously, we should do what in us lies to better their economic condition and, on the foundation thus laid, attempt the erection of the superstructure of a higher and a better civilization.

What Dr. Reinsch shows us, perhaps more clearly than anything else, is that we should not attempt to endow a people whose economic conditions are primitive with an administrative and governmental system suited only for conditions of comparative economic complexity and supportable only by a country whose economic resources are more ample than those usually found among tropical peoples not as yet blessed with a European government. It of course follows from what has been said—and this is a point which Dr. Reinsch does not neglect—that nothing can be more reprehensible, from the point of view of the interests of both the mother country and the dependency, than for the mother country deliberately to adopt towards the dependency a policy which is actuated merely by the desire to secure economic advantage from the relationship without regard to its effects upon the dependency.

The conclusions set forth in the introduction are reinforced in the subsequent chapters on special subjects. In these the various methods adopted by the colonizing nations of the present day are set forth with great detail.

While Dr. Reinsch's book is devoted, as has been said, almost exclusively to a consideration of the policy which a colonizing nation should pursue towards its dependencies, Mr. Willoughby's book avowedly purposes merely to give the reader a description of the methods adopted by the United States in its attempt to govern the various regions which its policy of territorial expansion has brought under its control. In his preface, the author states that he has purposely confined his attention to institutions rather than policies. Within the institutions considered, he includes not merely the central institutions of the dependencies to which attention is directed, but also

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their local institutions. Mr. Willoughby regards local institutions as of the greatest importance, on account of the effect they have on the solution of the problem which, according to him, is the key to the policy of the United States toward all the lands which it has in the past subjected and is now subjecting to the colonial régime. This problem is that of preparing them for the blessings of statehood and self-government. According to Mr. Willoughby this is the mission which the people of the United States have felt was theirs in acquiring territory and governing subject peoples. It found its first expression in the ordinance for the government of the Northwest territory, the first document in which we as a people outlined our colonial policy, and it is reiterated in the proclamations and published documents of the Philippine Commission, which are the most recent statements of our colonial policy. This being the case, Mr. Willoughby contends that our success in our colonial experiments should not be judged by the test of mere administrative efficiency, but rather by the degree of political capacity our control of subject peoples has cultivated among them.

This conception of our colonial policy is one which is based upon theoretical ideas as to the absolute brotherhood of man, considered apart from differences in economic condition. It is derived from the idea that the colonial problems which are presented to us now are the same which were presented to our fathers at the time they passed the Northwest ordinance. It makes no allowance for the differences in climate and soil between the territories to which the Northwest ordinance was applicable and the new districts which the fate of war has cast into our hands. Finally, it makes it impossible for us to judge our performance by the standards adopted by other nations.

It may be, however, that those in control of the present colonial policy of the United States, of whose ideas Mr. Willoughby may be regarded as an exponent, are right in their view of the policy which the United States should follow. The view which they adopt is certainly an exalted one. The experiment, for example, of educating our new wards, which the adoption of this view has entailed, is an interesting one. No colonizing nation has ever attempted it before. Who therefore can say it is doomed to failure? But it may not be amiss to point out that it seems to many to involve putting the cart before the horse—an arrangement which, under the ordinary conditions of travel, is not conducive to rapid and permanent progress. To many it would seem that elaborate school systems are supportable only where economic conditions are not altogether primitive, and where the pecuniary sacri-

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fices which such a policy imposes upon those who must bear the burden are not so great as to imperil the economic development which under ordinary conditions is necessary for real and lasting progress. It may be our duty to educate our less fortunate brothers, but it would seem more in accord with the dictates of altruism that we should do this at our own expense rather than at theirs.

Apart from Mr. Willoughby's ideas as to the proper colonial policy for the United States to adopt, with which all persons may not agree, the book which he has given us is an excellent presentation of the subject. It furnishes a clear and, for the most part, accurate description of our system of government dependencies. Some errors there are, naturally, but they are neither numerous nor important. Thus, on page 108, the supreme court of Porto Rico is said to consist of judges appointed by the president for life or good behavior. Nothing, however, is said in the act of Congress establishing the present government of Porto Rico (Laws, 1900, c. 191, p. 533) as to the term or tenure of these judges, but merely that they are to be appointed by the president and the Senate. On page 217, the statement is made that the judges of courts of first instance in the Philippines are appointed to serve during good behavior. This is not the case. The law (Laws, 1902, c. 1369, p. 39) merely provides that these judges shall be appointed by the civil governor and with the advice and consent of the Philippine Commission. Finally, it must be said that, when Mr. Willoughby departs from the task of describing institutions and begins to discuss results, he is inclined to express unjustifiably optimistic views as to the success which has attended the administration of the United States in Porto Rico and in the Philippines, particularly in the Philippines. This is perhaps due to his general approval of the altruistic policy pursued by the United States.

Apart from this general tendency and from the few errors which have crept in, Mr. Willoughby has given us a valuable book—valuable not only because the material which he has had at his disposal has been so arranged as to fulfill admirably the purpose of his work, but also because his book is really the only one which treats at the same time of our past colonial experiments and of the work which we are now endeavoring to do in the Orient and in our own hemisphere, in the arctic regions of Alaska and in the islands of the southern seas.

F. J. GOODNOW.

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Lynch Law. By JAMES ELBERT CUTLER. New York, London and Bombay, Longmans, Green & Company, 1905.—xiv, 287 pp.

In the period from 1882 to 1903 the number of persons lynched in the United States has exceeded the number legally executed in all but four years. It is natural that all sober-minded citizens should regard such a state of affairs as a national disgrace, and that the causes and cure of lynching should be widely discussed. There is hardly a popular magazine in the country which has not published articles on the subject in the last decade. It can not be said, however, that the discussion has been very fruitful. Most of the writers have apparently felt that on such a topic as this a coldly scientific attitude falls little short of immorality.

In Dr. Cutler's study we have at last a thoroughly scientific piece of work. The author has proceeded in an admirable way to set forth the conditions under which this social phenomenon has arisen. In its origin it was the product of frontier conditions of life. The pioneers who had pushed on beyond the jurisdiction of regular courts had to deal in some way with the problem of social disorder. The result was a type of summary action against malefactors which may properly be called popular justice. In some cases, indeed, all the forms of regular trial and execution were adhered to. As the frontier receded courts of law took over the functions of "regulators" and "vigilantes." But among a people who had learned to dispense with the courts it has not been easy to restore the reverence for law as it exists in European countries. The courts are regarded merely as instruments of the popular will; and whenever they seem ineffective the people are prone to take into their own hands the administration of justice. In old communities we have had many examples of this deliberate usurpation by a mob of the functions of the courts.

The typical American lynching of to-day is the degenerate offspring of the practice of popular justice of the frontier. It takes place under conditions of great popular excitement, as when the indignation aroused by crime is exacerbated by race prejudice. The deliberate purpose of suppressing crime plays a subordinate part; in its place there arises a primitive desire for vengeance, which demands not only the death of the accused but his torture.

In a chapter on "Lynch Law, 1830–1860," the author points out that lynch law, which had practically fallen into disuse, was revived by the anti-slavery agitation and by the sporadic slave insurrections of the early thirties. In this period, in the majority of cases, mob violence

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was directed against abolitionists; but negro crimes of the forms now regarded as typical existed, and the execution of the offenders by mobs was not unusual. The lynching of negroes did not attain the frequency of later days, partly because of the greater ease under slavery of restraining turbulent negroes from serious crime, but more especially because of the property stake in the slave. That negro crime should increase during the anarchic Reconstruction period was inevitable; that an exasperated people, inured to violence by the Civil war, should resort to lynchings with ever-increasing frequency, was no less inevitable.

One of the most interesting chapters of Dr. Cutler's book, entitled "Lynchings," gives statistics of lynchings from 1882 to 1903. While these statistics are not complete, they cover, in all probability, the great majority of cases and serve to indicate general tendencies. Since 1892, it appears, there has been a steady decline in the number of persons lynched. But this decline is not sufficiently marked to warrant the conclusion that the custom is dying out. In the same chapter are given a number of excellent charts, analyzing the statistics of lynching according to race, season and alleged causes.

Dr. Cutler does not hold very optimistic views as to the possibility of abolishing the lynching evil. The fundamental reason for its existence, in the South at any rate, is the general feeling that a system of criminal law which has evolved under the conditions of Northern Europe is not adapted to the task of checking criminal tendencies in an inferior race. A legal system which should differentiate between races, would, however, accord very ill with the spirit of our institutions. Dr. Cutler points out the need of such differentiation, but does not commit himself upon the question of its practicability.

ALVIN S. JOHNSON.

General Sociology. An exposition of the main development in sociological theory from Spencer to Ratzenhofer. By ALBION W. SMALL. Chicago, The University of Chicago Press, 1905.—xii, 739 pp.

In this broad-shouldered volume the head of the department of sociology in the University of Chicago puts forth the well-ripened fruit of more than twenty years of labor in his field. Unlike the ambitious sociological thinker, who projects a system of his own on the basis of some big interpretative idea that has come to him, Dr. Small has resisted the seductions of system-building. He has performed the humbler but more useful task of surveying, comparing and criticising the

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chief systems—of making, as it were, an inventory of the quick assets of sociology at its present stage.

The work comprises nine parts by no means equal in importance. Part i, "Introduction," discusses very fully the subject-matter, definition, impulse, history and problems. The second part presents Spencer's system under the title "Society considered as a whole, composed of definitely arranged parts (structure)." Spencer's analysis is accepted as true so far as it goes. The criticism is that he describes rather than explains, compares such institutional exhibits as societies display but neglects the process out of which these products rise. With all his stress on development, the great apostle of Evolution had but a dim idea of the forces that incessantly sculpture institutions and urge society from stage to stage.

After a brief *résumé* of Schäffle's system comes the meat of the volume in the two sections that present the system of Ratzenhofer. In part iv society is considered as "a process of adjustment by conflict between associated individuals." Part v considers society as "a process of adjustment by coöperation between associated individuals." The author's unfolding of the German thinker's system is a labor of love and deserves heartfelt thanks. Now for the first time Ratzenhofer's ideas are accessible in English. These two hundred odd pages contain the author's own constructive ideas and the reader who lacks the time to master the entire book should devote himself to this portion.

Part vi aims to fix the meaning and importance of a large number of concepts that come to light in the author's analysis of the social process. The last three parts consider the social process as "a system of psychical problems," "a system of ethical problems" and "a system of technical problems."

The book is not easy reading, partly because couched in the vocabulary of philosophy but chiefly because the thought is profound. Some parts, however, are over-amplified and the work could be cut down a quarter without sacrificing anything essential. The author preserves throughout the impartiality of the scientist. Indeed aloofness is carried rather far when he says (p. 311): "Genuine sociology has no vocation as a contestant in the arena where hostile interests struggle for division of material goods." Why should not the sociologist, besides elaborating pure science, throw his influence on the side of those groups whose victory will most promote general and permanent interests as distinct from special and transient interests? Why not align himself with whatever makes for national and racial longevity?

In this careful survey few of the problems that perplex the builder of

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sociology miss their due formula and place. Many pitfalls, quicksands and obstructions to which the earlier thinkers were cheerfully oblivious are charted. One big problem, however, is overlooked, namely, the causes and phases of the evolution of human wants. The gradual passage from conflict to coöperation hinges partly on the metamorphosis of the "interests" that actuate man. Back of social evolution lies the development of personality. This arch-mystery is the greatest enigma that sociologists have to solve.

Sociology, as our author sees it, does not appropriate the subject matter of other sciences. There is no poaching on anthropology, economics, comparative jurisprudence or science of religion. Politics and ethics are trenched on, indeed, but they have their foundations in the social. Sociology is "the science of the social process," that is, "the incessant reaction of persons prompted by interests that in part conflict with the interests of their fellows, and in part comport with the interests of others." In insisting that men unite or divide according as their interests harmonize or clash, Dr. Small seems to neglect the sympathies and antipathies that flow from awareness of resemblance or difference. To be sure, he does not mean merely material interests, and we may, if we choose, see in the mutual repulsion of color races a clash of æsthetic "interests." For my own part, I prefer to keep that useful term "consciousness of kind."

The author harbors no illusions as to the standing of his subject, and his moderation must disarm critics. He thinks that

> while sociology up to date can show comparatively little in the way of absolutely new knowledge about society, it has accumulated a wealth of perception about the value of different portions of knowledge, and about ways in which knowledge of society must be tested and organized [p. 64].

Dr. Small rides no hobby and his book betrays no one-sidedness. Whoever reads it attentively will see taking shape the sociology that is to be. The volume is another gratifying evidence that the lines followed by the chief workers of to-day converge. They are so rapidly coming to agreement as to scope, problems, methods and concepts of the new science that henceforth the thing for them to do is to get out into history, ethnography and statistics and bring in answers to set problems. What sociology needs is body.

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Sociological Papers. By FRANCIS GALTON, E. WESTERMARCK, P. GEDDES, E. DURKHEIM, HAROLD H. MANN and V. V. BRANFORD. With an introductory address by JAMES BRYCE. Published for the Sociological Society. London and New York, Macmillan & Co., 1905.—280 pp.

This first annual product of the meetings of the Sociological Society of England has not only an intrinsic, but also a historical—one might say an archæological interest. It is interesting, even to those who do not hold strictly to a culture-epoch theory, to observe that the discussions in the intellectual England of 1904 upon the nature of sociology and its place as a science parallel those of the sociological America or France of a decade or even two decades previous. Intrinsically, the scope of the offering is significant of an attempt to combine theoretical and practical work. Thus Branford specifically defines the sociological purpose as twofold:

> The first of these two purposes is a speculative one—the understanding and interpreting of that unveiling process or drama of social evolution, in which we are all interested as spectators and as participants. The second purpose is practical—the utilization of our knowledge, gathered and unified from its manifold sources, for the directing, as far as may be, and in part controlling, of this evolutionary process [p. 15].

The history and methodology of sociology are represented in the characteristically large-minded introduction of President James Bryce, in papers by Mr. Branford, Professor Durkheim and M. Fauconnet. "Pioneer Researches in Borderland Problems" include Westermarck's paper on "The Position of Woman in Early Civilization," particularly instructive to those who, familiar with this writer's previous work, observe in this paper his insistence upon the insecurity of our knowledge of primitive civilization and the dangers of dogmatizing. Mr. Mann's "Life in an Agricultural Village in England" emphasizes the needs of the rural community, impoverished economically and spiritually by emigration to the cities.

The opening paper by Mr. Branford "On the Origin and Use of the Word Sociology," attempts to determine the true scope and aim of sociological studies by classifying the studies and classifications which already exist. This is a good beginning. There are too many conflicting ideas in the field of sociological definition and classification for any new one to gain predominance. What is now needed is determination of the criterion according to which definitions should be made.

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Another paper by Mr. Branford (pp. 200 *et seq.*) emphasizes the need for classifying and interrelating "sociological specialisms"; and he does well to emphasize that this interrelating is not only a logical process of showing connection between different aspects of social phenomena, but a practical process of relating different vocations in the most useful way. The specialist interpreter of society, whether his standpoint be that of economics, jurisprudence or religion, will find small comfort in this or Professor Durkheim's critical analysis of "the more conspicuous of existing imperfections" due to the specialist sciences (p. 199). The discussion of Durkheim's and Branford's papers is in some respects the most important part of this volume, including names of eminence in almost every social science and constituting an exceptionally valuable cross-section of present opinion upon sociology.

On the practical side, Galton's notable article on "Eugenics" is already familiar to readers of the *American Journal of Sociology*. The subsequent discussion illustrates an almost incomprehensible ignorance, even on the part of physicians, of the results of statistical science in the fields of biology and heredity.

It is characteristic how practical a turn so apparently theoretical a matter as heredity has taken in the hands of the English school founded and led by Galton. Professor Geddes's paper, "Civics as Applied Sociology," is rather less satisfactory in this respect. He surveys the city, giving us the geographical panorama of the seaside industrial centre, with its tributary areas of lowland, upland and highland. He outlines further the historical development of the city and suggests the significance of evolution in every present condition of urban life, both of the city as a collective unit and of the citizen himself. Such a breadth of view is in itself stimulating, but it is not well to assume that from a historical survey, or through the historical sense, can be gained the essential conceptions by which the future of the city may be consciously shaped. Professor Geddes's practical conclusions do not justify his affirmative answer to his own question:

> May its coming social developments not be discerned by the careful observer in germs and buds already formed or forming, or deduced by the thinker from sociological principles? I believe in large measure both [p. 115].

The social indications and tendencies given by knowledge of past and present conditions are only possibilities of the future; the actual future condition will be due to some interaction of these tendencies, which the efforts of our generation can in some degree consciously direct.

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History is obviously fruitful in suggestions; Professor Geddes implies that it can also offer the ideal which, once attained, we shall use as a test for estimating tendencies and directing our own energies.

MICHAEL M. DAVIS, JR.

NEW YORK CITY.

Amerika und die Handelsvertragspolitik. Von MAX SCHIPPEL, Berlin, Verlag des Sozialistischen Monatshefte, 1906.—133 pp.

The adoption by Germany of a new tariff, which is to take effect March 1, 1906, and the threatened tariff war between that country and the United States have given rise to a flood of literature on the subject. The question of the commercial relations between the two countries has been diligently discussed in all its phases in newspaper articles, magazine reviews and books since the beginning of the century, when the revision of the German tariff got well under way. Unfortunately it must be admitted that the German statesmen, business men, economic and political writers have displayed a far more accurate and intimate knowledge of the American aspect of the problem than American writers have displayed in regard to the German point of view.

Herr Schippel's contribution to the discussion of this important problem now confronting the two nations is decidedly one of the most mature that have so far appeared. In it the Socialist member of the German Reichstag and author of *Zuckerproduktion* and *Grundzüge der Handelspolitik* undertakes to review the commercial policy of the United States, and he arrives at some startling conclusions, which are diametrically opposed to accepted ideas on the subject. The most important and original part of the work is contained in chapters iii and iv, devoted to a discussion of the principle of most-favored-nation treatment as applied in the United States.

That the United States has a distinct and original interpretation of the most-favored-nation clause in commercial treaties has been a well settled conclusion, accepted by jurists, economists and statesmen, both in the United States and in foreign countries. Whatever difference of opinion has existed on the subject was only as to the relative merits of the European and American interpretations. It remained for Herr Schippel to discover that the alleged American interpretation, universally believed to date from the rise of the American nation, is of but recent origin, and is in violation of our early commercial treaties, some of which are still in force, notably that of 1828 with Prussia.

Herr Schippel reproduces the two clauses usually appearing in

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American commercial treaties, which he designates as clause A and B respectively.

A. No higher or other duties shall be imposed on the importation into the United States, of any article, the produce or the manufacture of Prussia . . . . than are, or shall be, payable on the like article, being the produce or manufacture of any other foreign country [art. 5 of the American treaty with Prussia].

B. If either party shall, hereafter, grant to any other nation, any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional [art. 9 of the American treaty with Prussia].

The well known American interpretation of these two clauses is, that clause B has a modifying effect on clause A, so that any reduction of duties granted by the United States to a foreign country, on a basis of reciprocity, cannot be extended to another country, except upon the granting of equivalent concessions by the country desiring to enjoy the benefits of the reduced rates of duty. This is contrary to the European practice, by which any reduction of duties or any other favor in commerce granted to one nation is unconditionally extended to all nations entitled to most-favored-nation treatment.

Herr Schippel, in an elaborate argument, supported by abundant reference to early American diplomatic and commercial history, tries to prove that the American statesmen who drew the early commercial treaties containing the clauses cited could not possibly have intended that clause B should modify clause A. Clause A distinctly speaks of duties, and duties only. It further states explicitly that "*no higher or other* duties shall be imposed . . . *than are* or *shall be*" levied on the products of any other foreign country, making the application of the lowest duties in existence most absolute, sweeping and unconditional. Clause B introduces the conditional application of the most-favored-nation clause in regard to "any particular favor in *navigation* or *commerce*." Herr Schippel believes that in speaking of favors in navigation or commerce our early statesmen had in mind the numerous matters relating to shipping, port charges, the consular system, *etc.*, all of which were of far greater importance, in our author's opinion, than questions of duties.[1] The matter of customs duties was not of

[1] This view was advanced also by Chancellor von Bülow in a speech before the Reichstag in the session of 1898–99. (See Stenographische Berichte des Deutschen Reichstags, vol. 7, p. 789).

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sufficiently great importance at that time, Herr Schippel contends, and tariff treaties, such as we have to-day, were unknown. Herr Schippel handles his historical material with such skill as to make out a strong case.

Setting aside the question of commercial expediency and ethical justification for the respective American and European interpretations, however, it is doubtful whether the early American statesmen meant to make clause A absolute and unconditional. It would be impossible to enter here into an elaborate argument on this point, but one historical reference to our first treaty which contained the two clauses may be of interest as tending to disprove Herr Schippel's theory. The treaty in question was concluded with France in 1778. In 1792 Jefferson, in his capacity of secretary of state, reporting to the president on the negotiations with Spain for a treaty of commerce and navigation, expressed himself against granting any special reduction of duties to Spanish products for the following reason:

> If we grant favor to the wines and brandies of Spain, Portugal and France will demand the same; and, in order to create an equivalent, Portugal may lay a duty on our fish and grain, and France a prohibition on our whale oil, the removal of which will be proposed as an equivalent.[1]

This passage, which incidentally shows that the American and European statesmen of the end of the eighteenth century were acquainted with the art of juggling with tariff rates, which Herr Schippel seems to regard as an invention of twentieth century statesmen, clearly proves that our first secretary of state regarded clause B as having a modifying effect on clause A. While it is true that on some rare occasions departures from this view occurred, the American construction on the whole has been so uniformly and consistently applied as to have rightly earned its title to that name.

After all has been said, however, on the historical side of this argument, the question still remains to be answered on its economic and political merits, as to whether it is best to persist in an attitude not shared by any civilized nation in the world and leading to commercial isolation.

N. I. Stone.

Washington, D. C.

[1] American State Papers, Foreign Relations, vol. 1, pp. 134, 135.

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Die Stahlindustrie der Vereinigten Staaten von Amerika in ihren heutigen Produktions- und Absatz-Verhältnissen. Von DR. HERMANN LEVY. Berlin, Julius Springer, 1905.—x, 364 pp.

This book is the most valuable study of the American steel industry that has yet appeared. The author, who spent the year 1904 investigating the conditions here at first-hand, has tried to describe the present position of our steel industry and its possibilities as a competitor in the world-market, and he has performed his difficult task well. Dr. Levy's investigations cover the production of pig iron, steel ingots, rails, structural material, wire and tin plate. His study of pig iron may be taken as an illustration of the method used.

First there is given a rapid sketch of the growth and westward movement of the industry from the time of the Civil war. The past and present cost of producing ore and coke is carefully studied. Transportation rates and methods are investigated in detail, and the effective protection afforded to Pittsburg against European and eastern iron by the high freight rates of the 70's is pointed out. The enormous cheapening of labor cost by better machinery and methods is shown, and the marvelous savings due to combination and integration are reduced, as far as possible, to terms of dollars and cents. The effect of the tariff on production is judiciously stated. All this leads to a detailed study of present costs.

Next follows an excellent discusson of price-movements and the forces causing them. The source and character of demand, the influence of the tariff under various conditions, and the price policy of the great producers, are all subjected to careful examination. Thus we obtain a basis for comparing costs and prices that develops many interesting results.

The same general method is used in discussing each of the other branches of production, the emphasis shifting as the case may require. It is needless to say that the most interesting questions involved center in the tariff and the organization of the industry.

The tariff, as our author shows, has widened the range of fluctuation of prices by raising them inordinately in times of brisk demand, thus stimulating the building of new establishments producing at high cost, a process which leads in turn to over-production and the downward plunge of prices. Consequently we find widely varying costs as between different producers. The tariff enables the inefficient small producer to keep alive by guaranteeing very high prices when times are good, and yet benefits the trust by shutting out its efficient foreign

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competitor until prices have overtopped the foreign cost plus freight and duty. The tin plate industry, "the prize scholar of the protection school," receives a drubbing that ought to send it home crying to its mother—to get more protection pap. The whole discussion of the tariff is eminently fair and judicious, reminding one of Taussig. Dr. Levy very sensibly concludes that the iron and steel duties are no longer necessary for developing our giant infant industries, that by artificially raising prices at home they hamper exports and retard the growth of shipbuilding and other industries dependent on cheap steel.

Concerning organization, the results of this study are no less significant. From the standpoint of industrial efficiency, the economy of the integrated concern is abundantly demonstrated. The United States Steel Corporation is credited, rightly in the judgment of the reviewer, with producing steel more cheaply than any of its competitors. Its advantage consists primarily in its control of the best ore and coke lands, and diminishes in those lines of production where raw material forms a relatively small element in cost, being least, perhaps, in tin plate. Moreover, where tremendous plant and continuous large output are required, as in rail manufacture, competitors are few and pooling is easy; hence the rail monopoly. The over-capitalization of the trust demands dividends and cripples it as a competitor; hence it seeks a steady trade and stable profits rather than war to the death, even though its industrial position may be such as to insure victory. The discussion of the steel corporation's price policy shows the operation of the price-making forces under various conditions of quasi-monopoly.

A sane consideration of the United States in the world market brings the book to an end. For the present, the tariff and the overcapitalization of the trust will keep us at home. Even with these influences removed, we shall not destroy our European competitors. With cheaper labor, they will turn to the manufacture of highly-finished products, for which we shall, as heretofore, furnish the raw materials, and an international division of labor will be the result.

Dr. Levy has not escaped without a few errors of statement, but most of them are unimportant. The discussion of early freight rates is unsatisfactory, and the method of determining them used on page 26 is wholly wrong, but the error does not invalidate the conclusion as to the effective protection afforded by early railroad rates. In some cases a more definite indication of the sources from which the various statistical data are drawn would increase the value of the work. A tendency to a rather uncritical comparison of costs and prices occasionally appears, but it may be more apparent than real. A more extended dis-

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cussion of the southern iron situation would have been welcome. These are, however, mere matters of detail, and detract little from the general excellence of the work, which will stand as a careful, interesting and suggestive study of the American steel industry in its present-day relations. It is to be hoped that the Bureau of Corporations, in its investigation of the industry, may see fit to carry yet farther many of the lines of inquiry so profitably pursued in this excellent work.

HENRY RAYMOND MUSSEY.

BRYN MAWR COLLEGE.

Restrictive Railway Legislation. By HENRY S. HAINES. New York, The Macmillan Co., 1905.—355 pp.

This book is the formal statement of a course of lectures delivered at the Boston University Law School, and is characterized in consequence by a rapid survey of each phase of railroad activity rather than by an exhaustive treatment of the problem suggested by its title. The latter half of the discussion is confined to the questions of rate-making and regulation, but the introductory chapters have to do with the history and practical problems of incorporation, finance, construction and operation. This book is valuable not because it is a contribution to our knowledge of railroad economics, which it is not, but rather because it presents the matured judgment of a man, who, having enjoyed a rich experience as a railroad manager, now views the question from the standpoint of an observer.

It is a pleasure, in passing, to note his condemnation of the voting trust as a financial device, and his plain speaking concerning railroad accidents, which he charges to the negligence of employees and to administrative mismanagement. But in this season of lively controversy over the policy to be pursued by the national government in the matter of railroad regulation, we turn with most interest to the later chapters, and find that the author is to be classed among the supporters of the presidential policy. He feels that there is no other way to insure substantial justice except to clothe the Commission with power to fix a rate for the future. Whether or not this rate should go into effect at once, pending appeal, should be determined largely by a consideration as to where the greater burden of irreparable damage would fall. If, as is so often maintained by the railroads, the enforcement of the order would seriously disturb existing business relations and affect rates over a wide territory, there would then in the judgment of the writer be good reason for an *ad interim* suspension of the order. No general rate-

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making power should be assumed by the Commission, which should confine itself to specific cases presented to it. He argues strongly for the restoration by appropriate legislation of the validity of the long- and short-haul clause of the Interstate Commerce Act and would not permit its suspension except where natural conditions create dissimilar circumstances, and he urges that disastrous rivalry at competitive points should be avoided by the legalization of pooling contracts. The removal of existing inequalities between shippers at local and competitive points is in his opinion the main purpose to be sought in the amendment of the Interstate Commerce Act.

But the author's strongest argument for state regulation is found in his plea for the consumer, the one person whose interests are unrepresented because he has no legal standing in any complaint against railroad abuses. This point is so often overlooked in discussions of the question that the author's own words will bear quotation:

> It is these [the consumers] who bear ultimately the cost of production, the transportation charges and the profits of the middlemen, in proportion as the incidence of these burdens may be respectively determined by the principle of supply and demand. It is these who are without a voice in the making of rates on the commodities which they consume and who are incapable of self-protection by reason of their lack of organization. These it is who have a right to claim that protection from the state which can alone represent them when they really need it; and it is only a question first as to what they need, and then as to the efficient means to secure it for them. On this foundation rests the justice of state regulation of railroad rates and the equitable mode of such regulation.

The book is written in a straightforward manner and commends itself as the honest expression of a fair-minded student of the railroad problem. The reviewer would take issue with one assertion of the writer and incidentally enter a plea for the economist. It is stated that cost of service is favored by most theorists as the proper basis for rate-making, and that the principle of charging what the traffic will bear "has never secured any very generous recognition from theoretical rate-makers." If by theorists the academic writers are intended, this is a manifest misstatement, as the publications of economists on the railroad question for the past decade will clearly show.

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Economic Methods and Economic Fallacies. By W. W. CARLILE. London, Edwin Arnold, 1904.—x, 284 pp.

Riches and Poverty. By L. G. CHIOZZA MONEY. London, Methuen & Co., 1905.—xx, 338 pp.

It appears now that the one important outcome of the British fiscal agitation is the reawakening of public interest in questions of economic policy. The two books under review bear evidence enough of fiscal inspiration; but the questions they raise are of far deeper significance. Both writers display considerable familiarity with economic principles; neither shows much respect for the refinements of recent theory. Both writers appeal to the common sense of the plain man. They are both agreed that no good can come from the protectionist reaction. But in everything else they disagree. Mr. Carlile is a thorough-going reactionary. He is compelled to go back to the seventeenth century to find an economist whose views are thoroughly sound. As for recent policies of social reform, they are all unmitigated evil. Mr. Money, on the other hand, is an evolutionary socialist of the most advanced type. In his view the proper work for the next generation is to extend municipal trading to all the important forms of business enterprise.

The first half of Mr. Carlile's book is devoted to a criticism of modern economic theory. Any candid economist will admit, I suppose, that the modern student is compelled to acquaint himself with a disheartening mass of difficult terminology. Words which mean one thing in common speech mean quite another thing in the economics of the schools; and it is quite possible that some of the most formidable concepts in economic literature correspond with nothing at all in the realm of facts. Some economists have won great reputations chiefly through translating commonplaces into unintelligible language. Mr. Carlile pleads for a return to plain English. In his view it is not legitimate to define capital or rent or profit so as to exclude what is ordinarily meant by those terms, or so as to include what the practical man would never include. Where the plain man differs from the theorist, he holds, the plain man is necessarily right. That his contention is not altogether wrong everyone will admit. Recent theoretical tendencies indicate in many cases a return to popular economic conceptions. But that the practical man has a monopoly of intelligence and is incapable of calling things by wrong names seems a preposterous view. For example, it is impossible to say, without detailed investigation, what the business man means by his profits; one man will include items that another will

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exclude. It is impossible to say what Mr. Carlile means by profit when he says that it is the sole source of the fund for the employment of labor. Ambiguity of expression may do little harm in practical affairs; it renders scientific discussion impossible.

Because the business man regards money as unvarying in value, Mr. Carlile is compelled to adopt a similar view. He alleges that there is a theory current among economists that one thing fluctuates in value as much as another. "Wheat and iron warrants fluctuate just as much and no more than gilt-edged securities or than gold itself" (p. 139). It would be interesting to learn the names of economists so innocent of the world as to hold to any such view, but the author fails to mention them. Can it be that he sees no difference between the propositions, "all things fluctuate in value," and "all things fluctuate equally in value?"

The above is a fair illustration of the author's method. He selects extreme cases of futile theorizing, and forces upon the theories a meaning wholly foreign to anyone's thinking. In many instances, accordingly, where he has really a good case, his obvious unfairness prejudices the reader against him. In the second half of the book, where he discusses the protectionist fallacy, he again weakens his case by running amuck among those whose views are practically identical with his own. Why, for example, should he waste his energy in refuting the notion that fluctuations in exchange rates affect exports and imports? "The economists," he says on page 324, "do not consider how many commodities there are that have a definite market to which they go no matter what the price is." No doubt export of such commodities is but little affected by the rate of exchange. Economists hold, however, that there are some traders who are in doubt as to whether they shall export certain commodities or sell them at home. It is only in such cases that fluctuations in exchange rates have any effect upon exports. It is worth noting that Mr. Carlile uses the identical method which he decries when he undertakes to prove that an import duty on grain will raise the domestic price (p. 254).

Mr. Money's thesis is an old one; the rich in England are too rich and the poor are in an utterly hopeless state. He shows in a very interesting manner that the English nation consists of a vast mass of desperately poor people, with a thin crust of comfortable and wealthy persons. According to his calculations, the data for which are conscientiously given, £8,300,000,000 of the national income is enjoyed by 5,000,000 persons, the remaining £8,800,000,000 being parcelled out among 38,000,000. More than one-third of the total national income goes to one-thirtieth of the population.

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The chief consequence of this "error in distribution" the author holds, is the centralization of the real governing power in a few hands. What the working man must do, whether he must toil for noble or for ignoble ends, is determined by the caprice of a small and irresponsible class. "The possessors of wealth exercise the real government of the country, and the nominal government at Westminister but timidly modifies the rule of the rich" (p. 127). The rule of the rich, as the author maintains and demonstrates, to his own satisfaction, at least, is hardly a beneficent one.

To correct the "error in distribution" the author proposes a systematic endeavor on the part of society to give every child born in England a fair chance in life. Wherever necessary, he would supply funds out of the public treasury for poor mothers, to free them from the necessity of earning a living when the care of their infants requires all their time and strength. 300,000 children are born in poverty every year and, under present circumstances, necessarily have little chance of remaining in good physical condition through the first weeks of life. £3,000,000 would go far towards caring for the mothers and children in the period of their greatest need. As the national income from profits, dividends and rents aggregates £9,000,000,000, the cost of the enterprise seems moderate.

The education of the child is hardly less important. What does Great Britain do for its children in this respect? Little of practical importance. The housing of the people must also be improved, if the next generation is to be worthy of the nation. Mr. Money would have the nation loan money at extremely low rates—say one and one-half per cent—to municipalities, to be laid out in a gigantic suburban homes scheme. Private philanthropy has already amply demonstrated the feasibility of the plan. To finance these reforms, Mr. Money suggests what appears to be a rather moderate increase in the income tax and a decided increase, particularly in the case of large estates, in the death duties.

The book is on the whole a very interesting treatment of problems which economists are disposed to avoid. In resting his hopes for reform on the improvement of conditions for those who are yet to be born, Mr. Money escapes the usual objection to social reorganization, that the poorer classes of to-day do not possess the characteristics requisite to thorough-going economic democracy.

A. S. JOHNSON.

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Der nationale Besitzstand in Böhmen. Von DR. HEINRICH RAUCHBERG. Leipzig, Duncker & Humblot, 1905.—Three volumes: Volume I, xvi, 701 pp; Volume II, xii, 415 pp.; Volume III, charts and maps.

Although the expression "der nationale Besitzstand" is not easy to translate, the subject of Dr. Rauchberg's study is readily stated: it is the relative position of the two rival nationalities in Bohemia as regards territory and population. These volumes, the fruit as he tells us of three laborious years, represent in the main a working over of the results of the Austrian census of 1900, both published and unpublished; these are compared with former census figures and supplemented by statistics of movements of population, of education, of land-holding and wages, together with some special social and industrial inquiries made *ad hoc*.

To any one familiar with the national conflict which rends Bohemian life, the fact that the work was undertaken as a commission from a "Society for the furtherance of German science, art and literature in Bohemia" at once suggests partisanship. But though Dr. Rauchberg is here, as elsewhere, frankly pro-German, and though this inevitably determines his point of view, the book is a solid piece of scholarly work.

The discussion of the situation of the two classes of Bohemian population—the German speaking and the Bohemian or Czech speaking—is taken up with reference to the following matters: their numbers, absolutely and relatively considered; density, conditions of housing and settlement; movement of population, migration, assimilation; sex, age and civil condition; religion, education, occupation, social classes; special conditions in Prague; distribution of property in land; and finally wages. In this mass of ably handled material, with the full set of figures for ready reference and the excellent charts which make up the third volume, is a rich mine of information which can be only indicated here.

With regard to the question which is the main pre-occupation of the author, the relative growth of the two nationalities, the result is that there has been in general little change, either in their proportions or in their geographical position for the last fifty years or, probably, for a century (p. 669).

The changes of the last decade are of importance only if regarded as symptomatic and because each party makes the most of every trifle. Two points are to be noted. In the first place, in mixed regions with

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a German majority the Czech minority has grown faster than the German minority has grown in districts mainly Czech (p. 666). The mixed territory is, however, only a small part of the country after all. In 1900, only 3.28 per cent of the population was living in a *Gemeinde* with a minority so large as one-fifth of the whole (p. 665). For the most part one nationality or the other strongly prevails. Hence the second fact, that German districts have grown faster than Czech districts—a respective percentage gain of 7.63 and 5.98 (p. 666)—numerically far outweighs the much discussed invasion of German territory by Czechs, leaving to the latter 62.62 per cent of the population in 1900 instead of 62.79 as in 1890.

These facts are naturally only the reflection of the complex changes which have been going on in the life of the people, predominant among which is the change from a mainly agricultural to a mainly industrial state. While in 1869 agriculture and forestry occupied 54.44 per cent of the population, the percentage sank to 46.85 in 1890 and 41.12 in 1900 (p. 459).

With this alteration, and largely as a result of it, have gone very important shiftings of population. In the first place there has been an important emigration movement. In the decade 1890 to 1900 Bohemia sent abroad some 131,000, or 2.24 per cent of the population of 1890 (p. 260).[1] Beside this nearly 3000 left Bohemia for other parts of Austria.

Much more important is the internal migration. Almost one-half of the population is living elsewhere than in its native place. This movement has been in the main the familiar one from agricultural districts to manufacturing and industrial centres and from the country to the city. Since the German population is more largely urban and industrial than is the Czech, migration of this sort, so far as it carries people from territory of one national color to another, is preponderantly a movement of Czechs into German districts.

This increasing city and factory population shows the changes naturally to be expected: a higher birth rate (or rather one maintaining itself better against the general tendency to sink), due to the disproportionate presence of persons in the prime of life and to earlier marriages, a greater number of illegitimate births and of still births, and especially a higher rate of infant mortality; the net result is a more rapid natural increase than under the conservative conditions of rural districts.

[1] The American census figures, it may be worth noting, show an increase of 39,000 Bohemians living in the United States in this decade.

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This then is the explanation of both facts first noted, the growth of Czech minorities in German districts and the more rapid growth of German-speaking territory as compared to Czech. Both merely mirror the rise of industry with the gathering of Czech laborers to mines and factories in German territory and the more rapid growth of urban and industrial population compared to that in the depleted countryside.

It can be readily seen with what anxiety the results of all this must be canvassed by the two sides, each so eager to gain any advantage in territory and numbers.

The recommendations of Dr. Rauchberg are mainly two. The first of these is to improve conditions, especially in mining and industrial communities, which will mean increasing this (more largely German) population. It is characteristic of the grievous pre-occupation with the national rivalry that a man like Dr. Rauchberg should here and elsewhere base his plea for a more advanced *Socialpolitik*, aiming at the decrease of infant mortality, of the labor of married women, of unsanitary housing conditions and so forth, on the ground of nationalistic advantage—a ground doubtless chosen not as the best but as one likely to enlist support.

The second recommendation is assimilation. For this process the Czechs are much less favorably placed than the Germans, to whom, as we have seen, so many Czech laborers immigrate. Will these miners and factory hands permanently increase the Czech element or will they become Germans? Dr. Rauchberg considers it encouraging that in Vienna two-fifths of those born in districts Czech or mainly Czech in language speak German (p. 690)—a state of things very different from that which Americans are accustomed to expect in their "foreign colonies."

This suggests the question of the conception of nationality, which Dr. Rauchberg discusses in his first chapter. He frankly abandons the ethnological ground and the idea of affinity of blood in favor of community of culture and national consciousness of which language is the evidence. The Austrian census adopted this test of nationality in 1880, stating the *Umgangssprache*, the language of ordinary intercourse, not necessarily the mother tongue. Minorities complain that this method is to their disadvantage, as a man must speak the language locally in use. This is a fair criticism when national differences are not so emphasized that a man clings to his own language in every case, at least on the census card, so as to present the spectacle of a single individual claiming an *Umgangssprache* peculiar to himself in his locality. The method of the Hungarian census inquiry as to the mother

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tongue sounds fairer, but as there the instructions are that a man may give as such the language he prefers, full play is given for social and official pressure to Magyarize. It may be noted as a curious result of reckoning nationality by language and as a sign of the times in Bohemia, that the majority of the Jews have gone over to the Czech camp.

Meanwhile the whole question of national politics in Bohemia is being metamorphosed by the change already spoken of, which has converted so many thousands of agricultural laborers, for the most part quite indifferent to political interests, into an industrial proletariat, sharply conscious of its desires and welded into a compact and powerful socialist organization which seeks political power as the first step toward the realization of its plans.

The present distribution of voting power, which is on the principle of the representation of interests, no longer corresponds to the actual situation—even if one were ready to admit that it did so in the beginning of the sixties, when it was arranged. The one-sided preference shown to the great landed interests was at least less preposterous in an agricultural than in an industrial state. The change that has taken place must in the end bring about a reform of the suffrage. Dr. Rauchberg probably little guessed how rapidly this question would press for settlement. With or without a change in representation, however, the actual shifting of economic power must make itself felt.

Dr. Rauchberg's conclusions are, first, that the Germans, with their industrial advantage, will gain as industrial interests win more influence, and secondly that the working class, as it comes to the fore politically, will not indeed cease to be influenced by national feeling but will conceive the matter differently and pursue a different policy from that of the middle class, which has been largely seeking selfish class ends under the guise of national advancement. In this Dr. Rauchberg refers apparently to the Czech demand that a knowledge of both languages shall be required of administrative officials, a demand which would tend to throw office into the hands of the more bilingual Czechs. The Czechs, too, send their sons more largely to the gymnasia, universities and technical institutes than do the Germans, and the former have therefore a more pressing desire to secure official and semi-official careers for the next generation, for whom there are fewer business openings than among the Germans (pp. 693–4). In the lower ranks there is less clash of material interests. The outlook for material peace between the two nationalities is good. "This is my wish and my hope."

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The New Japanese Civil Code as Material for the Study of Comparative Jurisprudence. By NOBUSHIGE HOZUMI, professor of law in the University of Tokio, barrister-at-law of the Middle Temple. Tokio, 1904.—73 pp.

Ancestor Worship and Japanese Law. By NOBUSHIGE HOZUMI. Tokio, Maruya & Co., 1901.—iv, 74, (3) pp.

Die Hauserbfolge in Japan, unter Berücksichtigung der allgemeinen japanischen Kultur- und Rechtsentwickelung. Von RIUCHI IKEDA. Berlin, Mayer & Müller, 1903.—xxi, 269 pp.

Die Lehre von der japanischen Adoption. Von FUSAMARO TSUGARU. Berlin, Mayer & Müller, 1903.—xxiv, 228 pp.

The Early Institutional Life of Japan: A Study in the Reform of 645 A. D. By K. ASAKAWA, lecturer on the Far East at Dartmouth College. Tokio, 1903.—(7), 355 pp.

No better introduction to the study of Japanese law can be found than that which Hozumi offers in his brief essay on the *New Japanese Civil Code*—an essay prepared for the Congress of Arts and Sciences at St. Louis in 1904. It is wider than its title; for it outlines the earlier stages through which Japanese law passed, and in summarizing the innovations which have been made by the civil code in the law of personal capacity, of family and of succession, the author indicates the previous development of these branches of the law. In this part of his essay, Hozumi has restated the principal points brought out in his earlier pamphlet on *Ancestor Worship*. This is an illuminating introduction to the study of Japanese family law, but it has a wider significance. It throws much light on early Mediterranean institutions. While Hozumi courteously assures us that Fustel, Maine, Lubbock, Jhering and Hearn "have grasped the true inwardness of a custom which is totally foreign to them" in a manner which is "little short of marvellous," it is obvious, as he adds, that "they have observed the phenomena from without," and not, as he does, "from the point of view of an ancestor worshiper." Such studies as his serve the double purpose of confirming conclusions which were previously in a measure conjectural and correcting misapprehensions which outsiders could not well escape.

Hozumi's *Civil Code* and several of the other works under review give us a clear picture of the rapid assimilation of West European law since 1868, and of the movements which led to the adoption of the

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existing civil code. To the reader familiar with the reception of Roman law in Germany and in the Netherlands at the close of the middle ages, the similarity of the Japanese reception is most striking, although Japan passed in a generation through stages which in Europe covered centuries. Japanese students went to European universities as the north Europeans, seven centuries earlier, had gone to Bologna and other Italian universities. They returned to Japan, as the "legists" trained in Italy had returned to northern Europe, filled with a conviction of the superiority of their new learning. In both instances the study of the foreign laws was taken up at home in schools organized on the foreign model, while translations and treatises in the vernacular made the alien laws familiar to widening circles. In both instances, the conviction developed that the imported law was written reason or natural law of universal validity; it began to be cited in the courts and incorporated in judicial decisions. In Japan, as in mediæval Europe, the practical reception was hastened by the organization of a centralized administration of justice conducted by judges learned in the foreign laws. Almost simultaneously, in Japan, came a legislative reception of the foreign rules, at first piecemeal, and then in bulk, by codification.

In some respects, however, and notably in the completion of the reception by legislation, the Japanese movement differed from the European. No historical links connected the Japanese state with Europe as the theory of continuous empire connected the mediæval European states with the ancient Roman world; nor was there any single embodiment of West European law that could claim such authority as the lawbooks of Justinian commanded in the European middle ages. There was, however, one law book which at first seemed to enjoy an equivalent supremacy in Japanese opinion—the code Napoléon—and Japan came near receiving this code, almost in bulk, by process of enactment. In 1890 a civil code, compiled by a Frenchman and based very largely on the great French model, was actually adopted by the Council of State, to go into force in 1893. Then came a Japanese national reaction, closely paralleling the modern European reaction against pure Roman law. In this reaction the leading part was played by Japanese like Hozumi, who had studied in England and in Germany. Their appeals to Japanese national feeling found an energetic response; the introduction of the code of 1890 was postponed; a Japanese committee of revision was appointed, and from this committee came a new and independent code, which was adopted 1896–1898 and is now in force. In its general arrangement it is more German than French; in its details it is eclectic. Its fundamental conceptions and its rules regard-

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ing movable property and obligations are substantially West European. Its rules regarding family and succession are based on the ideas and customs of Japanese society, although in these matters also occidental points of view have been accepted and occidental rules have been introduced.

The house (*iye*), which constitutes the fundamental unit of Japanese society, is not the modern European family, nor, although it resembles in some respects the old Roman family, is it by any means identical with the latter. Like the Roman family it has a single head but it may contain not only the wife and the children of the head and his unmarried sisters, but also his brothers and his uncles, with their wives and children. It may even contain his parents and his grandparents. In other words, it represents a development intermediate between the Roman *gens* and the Roman family; and the further back its history is traced, the more like a little clan does it appear.

The succession to the headship, which Ikeda, in his *Hauserbfolge*, treats in a systematic and scholarly manner, is in many respects peculiar. A change in the headship occurs not only when the head dies, but when he abandons the active direction of the affairs of the house (*inkyo*). It is this not uncommon abdication which makes it possible that the head of the house may have under his authority his own father and possibly his grandfather also. Succession is regularly determined by primogeniture, with a preference of males; but females take precedence over heirs of a subsequent class, and female househeadship is by no means unusual. When the headship or the expectation of headship vests in a female, her husband enters her house; and, according to the terms on which he enters, he may come under her authority as a sort of prince consort, or he may become head of her house. If there are no heirs of the first class, *i. e.*, no real or fictitious descendants, the head may designate the successor, and if there be no legal or designated successor, the house may elect a new head.

Like the old Roman family, the Japanese house may be perpetuated by adoption, and the motive for adoption is the same, *viz.*, the maintenance of the *sacra*. Tsugaru's *Lehre von der Adoption* is as creditable a work as Ikeda's. Each of these writers treats his special topic in connection with the general organization of the house. Half of Tsugaru's monograph and more than half of Ikeda's are historical. Each writer, moreover, is familiar with the principal European works on the family and each utilizes analogies of occidental legal development.

The chief criticism which suggests itself to the reviewer concerns

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the uncritical spirit in which the Japanese legal writers—not merely those under review, but others as well—deal with the earliest sources of Japanese history. A foreigner, unable himself to read these sources in the original, may not presume to say that this or that specific statement can not be true; but when he encounters statements which are contradictory, he has the right to say that some of them must be incorrect. The description of the early Japanese house which these writers give us cannot be true, because it does not hang together; its details are more than inconsistent, they are incompatible. We are told that, before the reception of Chinese ideas and customs in the seventh century of our era, women enjoyed a more independent position than in later times; that they could hold land in their own right, and that they fought in war; that the early Japanese marriage left the wife among her own kinsfolk, with the husband on the footing of a surreptitious although licensed visitor; that paternal authority, if it existed at all, was imperfectly developed; that the word for household authority (*katoku*) was borrowed from the Chinese; that half-brothers and sisters who had different mothers could intermarry, because the community of blood derived from the common father was ignored. Not all of these statements, indeed, are found in all the books under review, but some of them are found in each.[1] At the same time these writers constantly assume and repeatedly say that the primitive Japanese house was based on the worship of the deceased male ancestors; that the head of the house was charged with the duty of maintaining this worship; that the succession to the headship vested normally in the eldest legitimate son; and that, in default of a male heir born in the house, adoption was resorted to in the earliest times, because the worship of the deceased male ancestors properly devolved upon a son of the house. In other words the European reader is asked to believe that the patriarchal house existed in a society living under the mother-right system of kinship and exhibiting matriarchal features.

Asakawa, in his *Early Institutional Life of Japan*, throws some light (pp. 7–12) on the character of the sources from which information is drawn regarding primitive Japanese customs. He tells us that the art of historical recording found its way into Japan ca. 600 A. D.; that the oldest chronicle which has come down to modern times, the *Kojiki*, was composed 711–712 A. D.; that it is especially full and precise as

[1] See Hozumi, Civil Code, p. 28; Ikeda, p. 5, note 1, p. 7, note 3; Tsugaru, p. 33, note; Asakawa, pp. 53, 57–59, 73, 98, 105. *Cf.* Iwasaki, Eherecht, pp. 11, 12, and Sakamoto, Ehescheidungsrecht, pp. 10–12.

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regards events from the seventh century B. C. to the fifth century of our era; that it begins to lose "its narrative detail" after 488 A. D. and stops with the year 628. He tells us, further, that there were older (seventh century) records of which the *Kojiki* apparently makes no use, and that it "was mainly based on the recital of one Hiyo-no-Are, a person of strong memory." To this it must be added that "the language of the *Kojiki* appears to be the vernacular of the date of its composition"; that in it the Chinese characters are used partly in a phonetic way; and that modern Japanese scholars do not agree in their interpretation of all of its characters.

The other source from which information is drawn regarding the first thirteen centuries of Japanese history is the *Nihongi*, composed 720 A. D. This, Asakawa tells us, "is written in a Chinese style as pure and dignified as its authors could make it"; and it is "so thoroughly unnational in many places, not only in language and style but also in thought, that the student has to be on his guard on every page." The record purports to be based, in part, on seventh century sources, and the narrative grows fuller as it approaches the year 697, at which date it closes.

That the *Nihongi* was written with a pro-Chinese bias Asakawa recognizes; but he takes seriously the claim advanced by the author of the *Kojiki* that the primary purpose of this compilation was "to record the genuine traditions of national life before they should become too disfigured by the wear and tear of time." The opinion of an outsider, who has no qualifications except a general knowledge of the historiography of occidental peoples, may be of little value; but to the reviewer, considering that every successful revolution in the occidental world has immediately striven to legitimate itself by falsifying antecedent history, and that the *Kojiki* and the *Nihongi* were written a couple of generations after the reform of 645 A. D., it seems probable that both of these early chronicles were revisions of the Japanese tradition in accordance with the new and dominant views, and that the *Kojiki*, with its interesting figure of the old man of strong memory and its use of the vernacular, was the more adroit of the two reconstructions.

Of the conflicting statements above noted—some pointing to indigenous mother-right, others to a primitive patriarchal household—one set or the other must be fictitious. If Japan, like China, had agnatic succession and the worship of male ancestors before the reception of Chinese ideas and customs, it seems difficult to account for the invention of mother-right traditions. If, on the other hand, Japan had neither male ancestor worship nor agnatic succession until these came

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from China by the way of Korea, it is perfectly intelligible that the ancient tradition should be falsified in accordance with the new ideas, without wholly expunging all traces of the older customs.

To the outsider it looks as if the critical acumen of Japanese scholars was somewhat blunted by religious and political prepossessions. To admit that the worship of male ancestors, which plays so important a part in their existing social life, is perhaps not indigenous, and that the chronicles which record an unbroken succession of emperors from the seventh century B. C. are possibly untrustworthy, may well be as difficult for them as the development of "the higher criticism" of the Bible has been for Europeans.

Asakawa's book touches but incidentally on the legal problems which occupy the other writers under review. He is chiefly interested in the economic and political organization of Japan before and after the reform of 645 A. D. The first third of his book is devoted to the earlier Japanese civilization; the second third to Chinese political ideas; and the remainder to the events and results of the reform. Room is found for a brief supplementary chapter showing how the imperial supremacy, which was established in the seventh century by breaking down the older clan organization and by substituting for the nobility of birth a nobility of service, was gradually undermined by the new military organizations, until, in the twelfth century, the feudal régime was definitely established.

Limitation of space and the fact that this QUARTERLY is not primarily a law journal prevent the reviewer from discussing the best parts of the books of Ikeda and of Tsugaru, *viz.*, those parts which deal with the mediæval and modern law of the Japanese house and which explain the interesting compromise which the new code has made between the historical solidarity of the house and the demands of modern individualism.

All of these books are so well written that the reader is seldom reminded that their authors are in each case using an acquired language. The four legal works are thoroughly lawyer-like and measure fully up to the standard of German and English legal literature. Asakawa's book is not only a valuable contribution to history but to political theory as well. None of the books except Asakawa's is indexed—an omission which is especially to be regretted in works of so technical a character as those of Ikeda and Tsugaru.

MUNROE SMITH.

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The Growth of the Manor. By P. VINOGRADOFF. New York, The Macmillan Company, 1905.—viii, 384 pp.

Professor Vinogradoff's new work on *The Growth of the Manor* is not a sequel to his *Villainage in England*, nor is it by any means such an epoch-marking book in the field of mediæval history. In the twelve years that have elapsed since the publication of those remarkable essays, many workers, among them Maitland, Round and Seebohm, have been busy with manifold problems of mediæval economy and social structure, and now Professor Vinogradoff seeks to sum up, especially for students of general history, the results of the researches of the past decade. He is not, however, playing the part of a compiler but is rather undertaking new syntheses on his own account, using recent achievements in his field as the basis of his argument and conclusions. He attempts bold constructive work and seeks to weld his materials into such form that the whole will be useful, not only to students of mediæval institutions, but to those who are working on the larger problem of social evolution.

The volume falls into three parts. More than one hundred pages are devoted to the period before the Anglo-Saxon invasion, and deal with Celtic tribal arrangements and Roman influence. At the outset there is a much needed warning that "we must guard carefully against the tempting idea that a state of society, even of an ancient one, may be treated as a system." After an examination of the elements of kinship and land holding, with their concomitants in Celtic society, our author arrives at certain conclusions, some of which will not seem new to those familiar with the theories of Mr. Jenks. Thus he concludes that aristocracy develops through economic struggle within the mass of freemen; that some of the elements of the manor are discoverable in this early period, but they are "in an incomplete and disconnected state, and overshadowed by the influence of other principles"; that serfs, free proprietors and free tenants are to be found dwelling side by side, but in separate communities and without the organization fitted for the maintenance of a dominant free class. Professor Vinogradoff's conclusions from the study of Roman land law, taxation and estates leads him to regard as "an exaggerated simplification of the historical process" Mr. Seebohm's somewhat rigid conception of the Roman villa in history. He emphasizes the military character of Roman occupation, the necessity of adaptation to local conditions in the distant parts of the empire, and the general survival of Celtic arrangements and communalistic practices which readily fused with those of the invading barbarians.

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The second portion of the volume, comprising about two hundred pages, deals with the old English period, in chapters on the English conquest, the grouping of the conquerors on the soil, the character of the shares in the township, agrarian arrangements, township organization, the unit of land-holding and manorial origins. While no quantitative estimate of the character of the English invasion is attempted, our author's conclusion is that it was so considerable as to produce profound changes and necessitate a thorough remodeling of society. This is based largely on Maitland's argument from language and the extant historical information as to the severity of the conflicts during the invasion. The early English class system, as reflected in the Kentish laws, is regarded by Professor Vinogradoff primarily "as an arrangement for estimating personal rank and tribal qualifications"; he does not find in it "any distinct elements of wealth, landed property or special connection with royalty." This is in keeping with the main thesis underlying the work, that no simple theory of conquest and subjugation will explain the social conditions on the eve of the battle of Hastings. Those conditions are to be explained rather by "a gradual spread of labor, discipline and subjection over a class of free tribesmen, as their means of sustenance grew smaller while military and fiscal requirements became heavier."

In his concluding pages, Professor Vinogradoff attacks some of the important problems of feudal England in three chapters on the principles of the Domesday survey, ownership and husbandry and social classes. The Norman conquest is regarded as a series of events which completed the establishment of a military aristocracy and which systematized old elements under the pressure of stronger central forces. Under the new conditions, the legal theory of the feudal state transformed individual and communal rights into rights derived from the overlord; the village community was transformed into a manor, partaking of the characteristics of an estate and a unit of local government; "but underneath this system the ancient principles of communal action and communal responsibility were still fully alive."

It is clear that Professor Vinogradoff's book is an argument, and the various generalizations upon which the main thesis rests will be received by students in different fashions according to their temper. Those who have grave suspicions of what appears to be even legitimate use of constructive imagination, and who date institutions only from their first appearance in well authenticated history, will find plenty of vulnerable points in the present volume. A single example will suffice. Our author, refusing to recognize the sharp line often drawn between the

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inquest and compurgation or other manifestations of communal delegation, carries the idea of township representation back into the Anglo-Saxon period. Not only does our author fail to cite evidence for this conclusion (his reference to Pollock and Maitland, i, 346, is clearly wrong) but no one who has sustained it has yet shown authority for it. Dr. Stubbs, who has made out perhaps the best case for it (vol. i, p. 128), does not give any really convincing proofs of his contention. The main stay of the theory is to be found in the Leges Henrici Primi, a private collection of laws not thoroughly trustworthy for the Norman period to say nothing of the days before the Conquest. The real problem concerns the extent to which we carry institutions backward and what are the limits of legitimate historical constructive imagination. No two men will entirely agree on these points, and Dr. Vinogradoff, by his good judgment and careful scholarship, has won a right to his own interpretations. His present work will be welcomed as a substantial and suggestive contribution not only to mediæval history but also to sociology.

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BOOK NOTES

Rhode Island, A Study in Separation, by Irving B. Richman (Houghton, Mifflin & Co., 1905), will take its place among the most satisfactory volumes in the *American Commonwealths Series*. It reveals a philosophical insight and possesses a literary flavor which are not commonly to be found in works of this class. Thoroughly enjoyable sketches appear in its pages of eighteenth century society in Newport and old Narragansett, while the book is sufficiently modern to indicate the changed conditions which exist in those localities to-day. Mr. Richman, while not excluding political history or a variety of personal touches and individual traits, conceives of his subject as essentially the history of three industrial and social groups which have been superimposed upon one another. The first was the agriculturists of the seventeenth century, the early settlers, who were extremely individualistic and separatist in spirit, and who survived as the advocates of reckless issues of paper money in the eighteenth century and as the narrow and corrupt inhabitants of the back country towns of the present day. The second group was the merchants who centered in Newport, fostered piracy and illegal trading, opposed the commercial restrictions of England, but in many instances adhered to the loyalist party during the Revolution. The third group was the manufacturers, who came to the front in the early nineteenth century and with whose growth Providence and the other cities of northern Rhode Island have assumed the lead. The two earlier groups have survived, and the intrenchment of the farmers in control of the towns, and through those of both houses of the legislature, has kept Rhode Island still true to its original separatist spirit. So modern is Mr. Richman in his treatment of the theme, that he discusses the alliance between the Republican machine and the towns and the efforts which are now making on the part of the city population to break this union and secure a more equal representation.

Dr. Frank Hochstetter has published in Schmoller's *Forschungen*, under the title *Die wirtschaftlichen und politischen Motive für die Abschaffung des britischen Sklavenhandels*, a thorough and interesting study of the conditions which led the British government to abolish slavery and the slave trade in the West Indies in 1807. While allowing that political and moral considerations had an influence, he seeks the explanation of the event chiefly in the changes in international trade

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consequent on the American Revolution and the wars of the French Revolution, and on the connection which these changes had with the relative productivity of slave as compared with free labor in the West Indies. This view of the event is not original with Dr. Hochstetter, but he has developed it clearly and with abundant illustration.

In a paper read before the Royal Historical Society in May, 1904, and published in their *Transactions*, Professor Edwin F. Gay of Harvard discusses the "Midland Revolt and the Inquisitions of Depopulation of 1607" in England. This was one of the later disturbances which was occasioned by the inclosure movement of the preceding century. As an incident of his critical and judicious study of the imperfect records of the event itself, Professor Gay discredits the view of Pollard, who would explain the greater revolts of the sixteenth century as wholly the result of inclosures.

The reader of the later volumes of Samuel R. Gardiner's *History of the Commonwealth and Protectorate*, especially of the third volume of the series (Longmans, 1901), will be impressed with the great loss which English scholarship has suffered in his death. The thoroughness of his research within the field of political history and the even balance of his judgment justify the highest confidence in his results. Especially suggestive in this volume are his likening of the aims of Cromwell with those of Strafford, and his account of the rise of the colonial policy of the period. The student will also do well to compare Gardiner's treatment of the Cromwellian settlement of Ireland with the more vivid and less balanced account which is given by Prendergast.

Modern methods of historical instruction have called forth a new kind of educational apparatus, the source book, which corresponds to the laboratory in natural science. Collections of carefully selected documents and of extracts from the various classes of historical material are appearing not only in this country and England, but in France and Germany. Two of the more recent compilations of this character are *A Source Book for Mediæval History: Selected Documents Illustrating the History of Europe in the Middle Ages*, by Oliver J. Thatcher and Edgar H. McNeal (New York, Charles Scribner's Sons, 1905; xix, 619 pp.), and *Select Documents Illustrating Mediæval and Modern History*, by Emil Reich (London, P. S. King and Sons, 1905; xvi, 794 pp.). The selections made by Professors Thatcher and McNeal are classified under ten headings: "The Germans and the Empire to 1073," "The Papacy to the Accession of Gregory VII, 1073," "The Struggle between the Empire and the Papacy, 1073–1250," "The Empire, 1250–1500," "The Church, 1250–1500," "Feudalism," "Courts,

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Judicial Processes, and the Peace," "Monasticism," "The Crusades," "Social Classes and Cities in Germany." The translation appears to be done with unusual care and the documents are abundantly annotated. There can be no doubt that the collection will prove of great value to the teacher, especially if he be primarily interested in the troubles between emperors and popes and in the institutional history of Germany. Dr. Reich's book differs from that just described in covering a much longer period—from Constantine to Bismarck—and in giving the documents in the original tongues, Latin, Greek, English, French, German and Dutch. The Dutch and German material is accompanied by a translation. The writer assumes that "it could not be reasonably supposed that a purchaser of a book like the present was unacquainted with the two classical languages or with French." Probably an American editor would have designated the Greek, rather than the German, as one of the languages which might expediently be rendered into English. The documents are not arranged chronologically, but under subject headings and countries. We first find a few treaties, from Westphalia to the second Peace of Paris, 1815. Then comes "Church History" from the alleged Edict of Milan, 313, to the bull *Pastor Aeternus*, 1870; and third, "General Institutions of the Middle Ages" from the Capitulary of Quierzy, 877, to the legalizing of the University of Orleans in 1312. Then the history of various European states is illustrated; the Holy Roman Empire, France (from the Edict of Nantes) and England receive most attention, and a half-dozen documents relating to the United States are given. There are brief comments, technical bibliographies and a very full index. The editor has not hesitated to give brief extracts, as in the Edict of Worms and the bull sanctioning the Jesuit order. In the latter, he has omitted, we venture to think, the very marrow, namely the constitution of the order. On the whole the selection seems well calculated to meet the needs of teachers and advanced students. The volume will be supplemented by a *General History* which Dr. Reich has in press.

Among the French colonies, past and present, Canada, Louisiana, India and even Madagascar have all received at the hands of the archivist and the bibliographer an amount of attention more or less proportioned to their historical importance, but this is not true of the West Indian colonies of France. As M. Jacques Dampierre justly observes in his *Essai sur les sources de l' histoire des Antilles françaises, 1492–1664* (Paris, Picard et Fils, 1904; xl, 239 pp): "One may search in vain for a special bibliography of the French Antilles that is at all serious, or for a critical study of any sort, however summary, that

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will indicate the sources, or even the repositories where the elements of their history may be looked for" (p. ix). This lack the author endeavors to supply, within the dates mentioned, by a work that forms the sixth volume of the *Mémoires et Documents publiés par la Société de l' École des Chartes*. Barring certain defects, he has produced a book that students of the history of the West Indies as a whole, as well as of the French Antilles alone, will greatly appreciate. M. Dampierre begins his study with a list of the principal bibliographies of Americana, from which for some reason he omits Larned's compilation. This is followed by a series of works annotated and classified under the several heads of descriptive, narrative and documentary sources of the history of the French Antilles, closing with a sketch of the materials in the French archives relative to the same subject. The book is really a bibliography of the history of the West Indies, with special reference to the French Antilles, and the emphasis in the latter respect is less marked than it should be. Indeed it seems strange that the author did not go beyond the year 1664—a date when French colonization in the West Indies had hardly begun. He explains in his introduction why he has adopted his threefold method of general classification, but he does not give any reason for dividing the descriptive sources into works on the geography and cartography of America, on the historical geography of the West Indies and on the products of the islands, while he portions out the narrative sources into those composed by non-French writers, into a critique of the original sources in French and into secondary sources. Nor does his listing of the original authorities and of secondary accounts together lessen the apparent confusion. If M. Dampierre, again, had allotted to the section on the French archives the amount of space that he devotes in his introduction to some superfluous remarks on the methods of classifying historical data in general, he would have made less meagre the portion of his work that affords the information most desired by the student of the colonial history of the French Antilles. The general investigator also might cavil at the superficial character of some of the notes.

The copious references to administrative, statistical, biographical and historical information contained in the *Index to the Proceedings of the State Historical Society of Wisconsin, 1874–1901*, prepared by Mary Elizabeth Haines (Madison, 1904; 399 pp.) will be very useful to those who desire easy access to the fruits of this society's activities. The historical material as such is found chiefly in addresses and papers, rather than in formal documents like those in the Society's *Collections*.

"An intelligent appreciation of the work of Spain as a colonizing

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power," remarks Professor E. G. Bourne in the preface to his edition of an English translation of a chapter of Roscher's *Kolonien, Kolonialpolitik und Auswanderung* (*The Spanish Colonial System*, New York, Henry Holt, 1904; iv, 48 pp.) is "an important object in the study of American history." While no one can properly deny the truth of the remark, a perusal of either the German original or of its English version does not afford the sort of appreciation desired. The reader may have some of his prejudices against the Spanish colonial system dispelled, but his confused notions about its actual operation are not likely to be dissipated. Even the rigid legal aspects of the colonial institutions are not described with any great degree of clearness. Such is bound to be the case so long as writers on this theme, instead of going directly to the almost unexplored archives of Spain, content themselves with legal codes and treatises, books of travel and poorly edited collections of printed documents referring to the sixteenth century, as their sole sources of knowledge about a period of colonization extending over three hundred and twenty-five years. The chief value, indeed, of the present sketch lies in the editor's suggestive notes.

Mr. Henry Gyles Turner's *History of the Colony of Victoria, 1797–1900* (London, Longmans, Green & Company, 1904; 2 vols., xvi, 394 pp.), is written with a fulness that leaves nothing to be desired in point of detail, though one might easily take exception to the distribution of emphasis. The author, according to his preface, does not pretend to be a trained historian; his volumes are not equipped with references or bibliographical apparatus; and they bear the impress of a strong political bias. Half of the space is devoted to the relatively barren period from 1797 to 1854, thus limiting the space given to the history of the colony since it has become a political society of considerable importance. Mr. Turner has unfortunately failed to give us a fair and critical account of the Victorian social experiments that are attracting the interest of the rest of the world, and has confined himself to a political narrative which is but slightly relieved by the chapters on the land question. The legislative experiments of Victoria Mr. Turner characterises as an enfeeblement of the sturdy self-reliance of early days, and state socialism he regards as the "lazy self-abandonment of manly effort, energy and capacity which mark the independent democrat." It also seems to him a matter of regret that "the profoundest student of political economy or history" has no more recognition at the ballot box than the laborer. Interesting as these suggestions may be, they do not answer the questions the intelligent public is asking about Victoria.

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By the publication of their *Deutsche Reden* (Boston, 1905, D. C. Heath & Co.) R. Tombo, Sr., and R. Tombo, Jr., have rendered a service to students of history and political science as well as to students of German. They have brought together in a convenient volume, from sources inaccessible in the ordinary college library, a number of speeches in the original tongue by German statesmen and publicists, including Dahlman, Bismarck, Bebel, Bülow and Wilhelm II. The speeches illustrate great political issues and movements in Germany from the Revolution of 1848 to recent colonial questions, and represent various party doctrines from Conservatism to Social Democracy. The volume will be useful to teachers of history in search for "reading" and to students equipping themselves for advanced work.

One of the recent products of the "*Fondation Thiers*" is Louis Cazamian's *Le Roman Social en Angleterre, 1830–1850* (Paris, Société nouvelle d' édition, Librairie Georges Bellais, 1904; 575 pp.). This is a study of the reaction against individualism and *laissez faire*, as illustrated and furthered by the writings of Dickens, Disraeli, Mrs. Gaskell and Charles Kingsley. These writers are selected, not because they originated the ideas which they expressed or the tendencies which they represented, but because they reached the widest circle of readers and exercised the greatest influence. With the exception of Disraeli they had no definite programs; but they made the upper and middle classes realize the misery of the agricultural and industrial laborers; they aroused sympathy and created "social remorse." They were all conservative in their instincts, and in M. Cazamian's belief their writings did much to prepare the way for remedial legislation and to avoid the peril of social revolution. The book is most readable.

La statistique: ses difficultés, ses procédés, ses résultats, by Professor André Liesse (Paris, Guillaumin et Cie, 1905), is intended, not for the professional statistician, but for "la foule des statisticiens improvisés." The author consequently rigidly excludes all discussion of technique and higher theory, confining his treatise primarily to a presentation of the history of the science, an outline of its scope, its initial difficulties and the more interesting results reached by its use. For the first time an attempt is made to give a popular account of the novel researches of Professor Vilfredo Pareto. The book has a special interest for teachers of statistics in that it reflects the character of the course given by the author at the Conservatoire national des Arts et Métiers.

The admirable *Introduction to the Infinitesimal Calculus*, by Professor Irving Fisher, which has already passed through three American editions and has inspired an Italian work along similar lines, is now

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translated into German by N. Pinkus under the title *Kurze Einleitung in die Differential- und Integralrechnung*. The usefulness of this little treatise to scholars desiring to keep in touch with recent statistical and economic theory has been greatly increased, by the author, through fundamental changes in the treatment of the principles of infinitesimals. The translator offers an explanation of the slow progress of the mathematical method in Germany: "Die mangelhafte Verbreitung mathematischer Kenntnisse, die sich z.B. in den offiziellen Statistiken so fühlbar macht, und anderseits die immer noch ausbleibende Stellungnahme gegenüber der mathematischen Schule der Volkswirtschaftslehre sind, nebst manchen anderen, Uebelstände, die der überwiegend und einseitig juristischen Vorbildung der Kameralisten zuzuschreiben sind."

Under the title *President Roosevelt's Railroad Policy* (Boston, Ginn and Co., 1905), the Economic Club of Boston has published a discussion held under its auspices on March 9, 1905. Addresses were delivered by Commissioner Prouty, President Willcox of the Delaware and Hudson, Judge Grosscup and Mr. Frank Parsons. Mr. Prouty's address was a vigorous defense of the Commission in his usual brilliant but extravagant style. In fact, both his address and the reply of President Willcox contained more denunciation than argument. Judge Grosscup offered his plan, which has since become familiar, for an Interstate Commerce Court, and Mr. Parsons proposed the creation of a board of regulation composed of representatives of the interests of railways, labor and the general public. The book has a certain ephemeral value, although the views of all four of the participants may be found more adequately expressed elsewhere.

Mr. Arthur L. Bowley has reprinted, under the title *England's Foreign Trade* (London, Swan Sonnenschein & Co., 1905; x, 165 pp.) an essay written in competition for the Cobden Prize in 1892. The essay in its present form is an excellent brief account of the development of British foreign trade in the nineteenth century. What makes the book especially valuable is its endeavor to correlate movements in the expansion of trade with broader movements in the economic life of the country. The brevity of the author's exposition makes it inevitable that some statements which are not unqualifiedly true should slip into the text. It is not strictly true, for example, that before the Napoleonic wars the British colonies were compelled to export all their produce to England (p. 8). The author's own figures and diagrams fail to show that at times in the Napoleonic wars British trade was reduced almost to *nil* (p. 25). The weakness of the United States in shipping after the war of 1812 was due not so much to inferior wood and dear imports (p. 29) as to dear labor and high profits in manufacturing.

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In conflicts of private law, differences of practice in different jurisdictions give rise to singular problems. For example: a court in state A being called upon to decide a given question, finds that, according to the practice obtaining in its own territory, the question is governed by the law of state B; but on investigating the law of state B it finds that the courts of that state, if seized of the same case, would apply the law of state A. The question then arises: Should the court of state A follow its own rule of international private law and apply the territorial law of state B, or should it apply its own territorial law? Continental jurists who accept the latter solution speak of a *renvoi* or *Rückverweisung*. A similar but distinct problem arises when the court of state A starts to apply the law of state B, but finds that the courts of that state, if seized of the same case, would apply the law of state C. The continental jurists who assert that in such a case the court of state A should apply the territorial law of state C speak again, not very happily, of a *renvoi* or, more accurately, of a *Weiterverweisung*. Further complications are possible, but these will suffice for illustration. In his *Notes on the Doctrine of Renvoi in Private International Law* (London, Stevens and Sons, 1904; 124 pp.), John Pawley Bate, reader of international law in the Inns of Court, discusses all these questions from the points of view of legal theory, of expediency, and of actual practice in different countries. His book covers the ground; his presentation of the complex problems treated is a model of lucidity; and his conclusions are characterized by an uncommon degree of common sense.

To O. Q. van Swinderen's *Esquisse du droit pénal actuel dans les Pays-Bas et a l'étranger*, a fifth bulky volume has been added (P. Noordhoff, Groningen, 1903; xvi, 472 pp.). The work is a collection of material from all parts of the world: it includes penal codes and special penal laws, proposed or adopted, with critical notes by the learned editor. All the matter not originally published in French is translated into that language. There is no discernible plan of arrangement, and the transitions from text to comment and from one country to another are indicated only in the table of contents and on the page margins. All the material is of value, and much of it is not elsewhere so easily accessible; but the compilation will not be really useful to students until it is furnished with an alphabetical index of countries and of topics. The chief features of the fifth volume are: a penal code which was submitted to the Norwegian parliament, 1893–96, but has not yet been enacted; the penal code of Appenzell, in force since 1899; the penal code of the Sudan, put in force in 1899 by proclamation of Governor-General Kitchener; a Dutch law of 1901, concerning juvenile

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offenders; and a Dutch law of 1903, which owes its existence to the great railway strike of that year. In connection with these Dutch laws the editor gives the governmental and legislative reports and the debates, including (pp. 460–469) an *aperçu* of the chief European and American statutes concerning intimidation and concerning refusal of public service.

In addition to the works on Japanese family law which seemed to demand formal review because of the eminence of their authors or the exhaustive character of the works themselves, and which are therefore reviewed in this number of the QUARTERLY, a word should be said of two excellent compilations of moderate bulk, which appear to be doctor dissertations—Kojiro Iwasaki's *Das japanische Eherecht* (Rossberg'sche Verlagsbuchhandlung, Leipzig, 1904, vii, 64 pp.) and Saburo Sakamoto's *Das Ehescheidungsrecht Japans* (Mayer & Müller, Berlin, 1903, viii, 107 pp.). Each gives a fairly complete sketch of the development of Japanese marriage and of the innovations introduced by the civil code; and each contains, as regards the primitive organization of the Japanese house, the same conflicting statements which are found in the more elaborate works of Ikeda and of Tsugaru.

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